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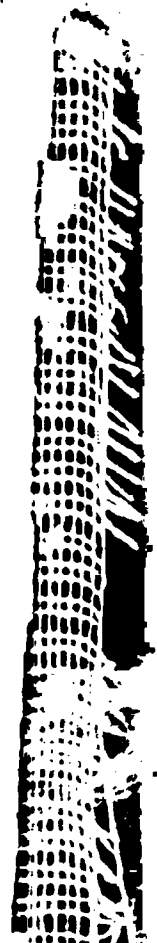
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CURIOSITIES

— OF —

LAW AND LAWYERS.

(Paterson, James -

BY CROAKE JAMES. [1-23. f



1883

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CURIOSITIES OF LAW AND LAWYERS.

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PREFACE.

ON lately retiring, after half a century's practice of the Law, my companions, in Grand Divan assembled, bound me over to complete for their use a Repertory of Good Things relating to our common profession, which I had long been preparing, and of which they had read and heard snatches. "These presents" contain this fond memorial of departed joys. There are many favourite sayings, standard illustrations, golden sentences, exploits of legal heroes, jests, explanations of curious and memorable doctrines and incidents, which make up the "natural history" of the Lawyer Tribe. I have with great care selected and assorted these, and trust they will be found to amuse, if not edify, Lawyers, as well as their numerous Clients.

C. J.

CURIOSITIES OF LAW AND LAWYERS.

CHAPTER I.

ABOUT LAWYERS GENERALLY

HOW LAWYERS GET TO HEAVEN.

There is a pleasant story of a lawyer, who, being refused entrance into heaven by St. Peter, contrived to throw his hat inside the door; and then, being permitted by the kind saint to go in and fetch it, took advantage of his being fixed to his post as doorkeeper to refuse to come back again.

THE LAWYER'S PILGRIM'S PROGRESS.

Adolphus, the criminal lawyer, says that the judges in his time were much impressed with the following table of degrees. The three degrees of comparison in a lawyer's progress are: getting on; getting on-er (honour); getting on-est (honest). The judges, he says, acknowledged there was much sad truth in this jingle.

THE LAWYER'S PATRON SAINT.

St. Evona, or Ives, of Brittany, a famous lawyer in 1300, was lamenting that his profession had not a patron saint to look up to. The physicians had St. Luke; the champions had St. George; the artists each had one; but the lawyers had none. Thinking that the Pope ought to bestow a saint he went to Rome, and requested his Holiness to give the lawyers of Brittany a patron. The Pope, rather puzzled, proposed to St. Evona that he should go round

the church of St. John de Lateran blindfold, and after he had said so many Ave Marias, the first saint he laid hold of should be his patron; and this solution of the difficulty the good old lawyer willingly undertook. When he had finished his Ave Marias, he stopped short, and laid his hands on the first image he came to, and cried out with joy, "This is our saint—this be our patron." But when the bandage was taken from his eyes, what was his astonishment to find, that, though he had stopped at Michael's altar, he had all the while laid hold, not of St. Michael, but of the figure under St. Michael's feet—the devil!

This St. Evona of Brittany, it is said in Carr's account of the Netherlands, 1684, was so dejected at the choice of a patron saint, that in a few months he died, and coming to heaven's gates, knocked hard. Whereupon St. Peter asked who it was that knocked so boldly. He replied that he was St. Evona, the advocate. "Away, away!" said St. Peter; here is but one advocate in heaven; here is no room for you lawyers." "Oh, but," said St. Evona, "I am that honest lawyer who never took fees on both sides, nor pleaded in a bad cause; nor did I ever set my neighbours together by the ears, nor lived by the sins of the people." "Well, then," said St. Peter, "come in!" He became the patron saint himself.

This story puts one in mind of Ben Jonson going through a church in Surrey, and seeing poor people weeping over a grave, whereupon he asked one of the women why they wept. "Oh," said she, "we have lost our precious lawyer, Justice Randall. He kept us all in peace, and always was so good as to keep us from going to law—the best man that ever lived." "Well," said Ben Jonson, "I will send you an epitaph to write upon his tomb," which was—

God works wonders now and then :
Here lies a lawyer—an honest man.

WHY LAWYERS TAKE UP BAD CASES.

One of the most famous French advocates, Langlois, was asked by the President of the Parliament of Paris why

he took upon him to plead bad causes. He answered, with a smile, that he did it because he had lost a great many good ones.

It was said by Alexander ab Alexandro, a famous Neapolitan lawyer about 1500, that when he saw it was impossible for advocates to support their clients against the power and favour of the great, it was to no purpose to take so much pains in studying the law, for the issue of suits depended, not on the justice of the cause, but on the favour and affection of a lazy and corrupt judge, whom the laws suppose to be a good and upright man.—Bayle's Dict.

Laud relates in his diary, that when he was standing one day, during dinner, near his unfortunate master, then Prince Charles, the prince, who was in cheerful spirits, talking of many things as occasion offered, said that if necessity compelled him to choose any particular profession of life, he would not be a lawyer; "for," he said, "I can neither defend a bad cause, nor yield in a good one."

ROMAN AND DUTCH ADVOCATES—ON THEIR VOCATION.

By the Roman laws every advocate was required to swear that he would not undertake a cause which he knew to be unjust, and that he would abandon a defence which he should discover to be supported by falsehood or iniquity. [Cicero's oration *pro Milone* is a striking instance of the strict observance of this rule!] This is continued in Holland at this day; and if an advocate brings forward a cause there which appears to the Court clearly iniquitous, he is condemned in the costs of the suit; the examples will, of course, be very rare: more than one has, however, occurred within the memory of persons who are now living. The possible inconvenience that a cause just in itself might not be able to find a defender, is obviated in that country by an easy provision: a party who can find no advocate, and is nevertheless persuaded of the validity of his cause, may apply to the Court, which has in such cases a discretionary power of

authorizing or appointing one.—Quarterly Review, Jan. 1831.

And the same course as that last mentioned is said to have been always followed in Scotland.

A SUBTLE LAWYER.

They used to say of Wise, a lawyer of Lincoln's Inn, a very subtle and acute man in all business he undertook, that he was like a mouse among joint-stools: one may see where he moves and runs, but no man knows where to hit him.—Camden Soc. (No. 5), 35.

THE DEVIL'S ADVOCATE.

In the Romish procedure relating to the canonization of saints, one prominent official who takes part in the business is called the devil's advocate. When the canonization is proposed, it lies on the part of the Church to set forth all the virtues of the saint, the miracles his bones have wrought, and all the merits that can be ascribed to the deceased. And, on the other hand, the function of the devil's advocate is to find flaws in all this evidence, to slight the good deeds, to doubt the miracles, and to rake up all the evil that can be said or thought against the deceased, so as to show there is no good ground for the canonization. Hence a devil's advocate is often an apt description of any one who makes unscrupulous accusations and abuses worthy characters.

HE WHO IS HIS OWN LAWYER IS A FOOL.

Mr. Cleave, when tried before Lord Lyndhurst in the Court of Exchequer, acted as his own counsel, and began his speech by remarking that before he sat down he feared he should give an awkward illustration of the truth of the old adage, namely, that he who acts as his own counsel has a fool for his client. The judge at once remarked, "Oh, Mr. Cleave, don't you mind that adage: it was framed by the *lawyers*."

THE SECRET OF SUCCESS IN LAWSUITS.

A veteran attorney, Mr. Selwin, who once stood as candidate for Chamberlain of London, after retiring from business, on being asked by his niece what were the requisites for success in litigation, replied as follows: "Why, it depends on a number of circumstances: first you must have a good case; secondly, a good attorney; thirdly, a good counsel; fourthly, good witnesses; fifthly, a good jury; sixthly, a good judge; and, lastly, good luck."

FIRST BOOK FOR A LAWYER'S LIBRARY.

Macklin, the actor, told a company that he at first designed his son for the law, and for this purpose entered him in the Temple, where he procured chambers and a library above what he could afford, considering the uncertainty of his income. "And what book, sir," said the veteran actor, "do you think I made him begin with? Why, sir, I'll tell you—the Bible—the Holy Bible." "The Bible, Macklin, for a lawyer!" exclaimed his friend. "Yes, sir, the properest and most scientific book for an honest lawyer, as there you will find the foundation of all law as well as all morality."

AN IRONICAL DEFINITION OF A LAWYER.

Lord Brougham is said in an ironical way to have defined a lawyer as "a learned gentleman who rescues your estate from your enemies, and keeps it to himself."

BUT FEW HONEST LAWYERS.

Lord Clarendon (the second) in his diary (Jan. 1689), says, "I was at the Temple with Mr. Roger North and Sir Charles Porter, who are the only two honest lawyers I ever met with."

OUR LAWYER ENGAGED ON THE OTHER SIDE.

An opulent farmer applied to an attorney about commencing a lawsuit, but was told that the latter could not

undertake it, being already engaged on the other side. At the same time he said he would give the client a letter of recommendation to a professional friend, which he did. The farmer is said out of curiosity to have opened the letter, and read as follows :

Here are two fat wethers fallen out together;
If you'll fleece one, I'll fleece the other,
And make 'em agree like brother and brother.

The perusal of this letter, it is said, opened the eyes of the clients, and cured them at once.

THE PORTION OF A JUST LAWYER.

The following was considered gravely humorous in 1740, as "Didius," in the *Gentleman's Magazine* of that date, writes to that journal: "I was in company with two or three friends some time ago, when the discourse turning upon the subject of lawyers, many severe things were said of that body of men, and the ill practices they are often guilty of. But a grave gentleman replied that it was far from an equitable proceeding to condemn the whole for the faults of some, since he personally knew several worthy men of the profession, who constantly endeavored to compose differences, instead of promoting strife; and repeated to us 'The Portion of a Just Lawyer,' as follows: 'Whilst he lives, he is the delight of the court, the ornament of the bar, a pattern of innocence, the glory of his profession, a terror to deceit, the oracle of his country; and when death calls him to the bar of Heaven by the *de habendo corpus cum causâ*, he finds the *judge* his advocate, *nonsuits* the devil, and continues one of the long *robe in glory*.' "

CLIENTS WHO LOSE AND CLIENTS WHO WIN.

"I was mightily delighted with the whim I was shown on a sign at a village not far from this capital; though it is too serious a truth to excite one's risibility. On one side is painted a man stark naked, with this motto: 'I am the man who went to law and lost my cause.' On the reverse is a fellow all in tatters, looking most dismally,

with this motto: 'I am the man who went to law and got my cause.'

"This brings to my mind a passage reported of the Scottish king, James I., who soon after his accession to the English throne would needs be present in court while a notable cause was pending. Those on the plaintiff's side having finished what they had to say, it proved so much to the king's satisfaction, that he cried out, 'It is a plain case,' and was going, when somebody said to him, 'Please to stay, sir, and hear the other side.' He did so, and the defendant's party made their case no less plain to His Majesty's conceptions; whereupon the monarch departed in a passion, crying, 'Rogues all! rogues all!' The late renowned Czar, Peter the Great, being in England in term-time, and seeing multitudes of people swarming about the Great Hall wherein are held the three superior Courts of Judicature, is reported to have asked some about him who all those busy people were, and what they were about. Being answered, 'They are lawyers, sir.' 'Lawyers!' returned he, with great signs of astonishment, 'why, I have but two in my whole dominion, and I design to hang one of them the moment I get home!' "—Fog's Journal, 1737.

LITIGANTS AND LAWYERS.

Hudibras with masterly skill and humour states the old, old story of litigants and lawyers:

He that with injury is grieved,
And goes to law to be relieved,
Is sillier than a sottish chouse
Who, when a thief has robb'd his house,
Applies himself to cunning men
To help him to his goods again:
When all he can expect to gain
Is but to squander more in vain.

For lawyers, lest the *bear* defendant
And plaintiff *dog* should make an end on't,
Do stave and tail with writs of error,
Reverse of judgment, and demurrer,
To let them breathe awhile, and then
Cry whoop, and set them on again:
At last with subtil cobweb cheats
They're caught in knotted law, like nets,

In which, when once they are embrangled,
The more they stir, the more they're tangled;
And while their purses can dispute,
There's no end of th' immortal suit.

THE BUSY LAWYER.

Mr. Dunning when at the bar being in very great business, was asked how he contrived to get through all his work. He replied: "I do one-third of it; another third does itself; and I don't do the remaining third."

Lord Thurlow was once asked how he got through his business as Lord Chancellor. He answered, "Oh, just as a pickpocket gets through a horsepond: he *must* get through!"

COMPARATIVE LEARNING OF LAWYERS.

Serjeant Hill's opinion was asked by Nichols, whether Dunning was as learned as Serjeant Glyn. "No," was the answer; "everything which Dunning knows, he knows accurately; but Glyn knows a great deal more."

Glyn was reputed the best-read lawyer in Westminster Hall, and took a leading part on Fox's Libel Bill.

LAWYERS AS TRIMMERS.

Sir James Mackintosh, when speaking of "the versatile politicians who had the art and fortune to slide unhurt through all the shocks of forty years of a revolutionary age," says, "the Marquess of Winchester, the Lord Keeper, who had served Henry VII., and retained office under every intermediate government till he died in his ninety-seventh year, with the staff of Lord Treasurer in his hands, is perhaps the most remarkable specimen of this species preserved in history." But more scandal was excited in his own time by William Herbert, whom Henry VIII. created Earl of Pembroke. Having followed all the fantasies of that monarch, and obtained from him the dissolved monastery of Wilton, he was a keen Protestant under Edward VI., and one of

the first to acknowledge and to desert Queen Jane. Mary having restored Wilton to the nuns, he is said to have received them "cap in hand;" but when they were suppressed by Elizabeth, he drove them out of the monastery with his horsewhip, bestowing upon them an appellation which implied their constant breach of the vow they had taken.—3 Mackintosh's Hist. of England, 155.

POPULAR PREJUDICE AGAINST LAWYERS.

In 1450 Jack Cade's rebellion broke out, which was specially aimed against the Chancellor and all concerned with the profession of the law. The measures at first taken to suppress it were most inefficient, and the King and his court were obliged to seek protection in Kenilworth Castle, London opening its gates to the insurgents. The Chancellor took the chief management of affairs, and the rebels having received a repulse, he succeeded in dispersing them by offering a general pardon and setting a price on Cade's head, which was earned by Iden of Kent. Many supposed that Cade had been set on to try the disposition of the people towards the right heir to the crown. He pretended to be a son of Mortimer, who had married the daughter of the Duke of Clarence, elder brother of John of Gaunt; and in this belief thousands flocked to his standard. The Duke of York, the real heir through a daughter of Mortimer, at last openly set up his claim, for which there was now a very favorable opportunity, from the intellectual weakness of the King—from the extreme unpopularity of the Queen, whose private character was open to great suspicion, and who was considered a devoted partizan of France—from the loss of the foreign possessions which had so much flattered the pride of the English nation—from the death and discomfiture of the ablest supporters of the reigning dynasty—from the energy and popularity of the pretender himself—and from the courage, the talents, and the resources of his numerous adherents. The claims of the rival houses being debated in the Temple Gardens, the *red and white roses* there plucked became the opposing emblems; and men took different

sides according to their judgment, their prejudice, and their interest.—1 Camp. Chanc., 352.

The Chancellor, Simon de Sudbury, being the author of the abhorred capitation tax in 1380, in the rebellion which it excited was the first victim. John Ball, the famous seditious preacher, inveighed bitterly against him by name, and, in reference to his aristocratic birth, the often-quoted lines were made which, Hume says, "in spite of prejudice, we cannot but regard with some degree of approbation."

When Adam delved, and Eve span,
Where was then the gentleman?

The army, or rather mob, 100,000 strong, under Tyler and Straw, having taken post at Blackheath, and threatening general destruction—more especially to lawyers, and all who were supposed to have been instrumental in imposing the tax, or who resisted the demands for its repeal, the Chancellor took refuge in the Tower of London. They pursued him thither, attacked his fortress, and it being feebly defended, they soon stormed it. They instantly seized him, and dragged him to Tower Hill, with the declared intention of executing him there as a traitor. In this extremity he displayed great courage and constancy, and addressing the multitude, reminded them of his sacred character, and tried to rouse them to some sense of justice and humanity. All these appeals were ineffectual; after many blows, his head was struck off, and his dead body was treated with barbarous indignity.

In the riots of 1780 a similar spirit was displayed, and siege was laid to the Inns of Court with the intention of exterminating the whole race of lawyers, that "the skin of an innocent lamb" might no longer be converted into an indictment.—1 Camp. Lives of Chanc., 283.

DOCTOR COW-HEEL, THE CIVILIAN.

Cowel, author of the *Institutions* and the *Interpreter*, was an eminent civilian in his day, and during the contest between the civilians and the common lawyers he was the champion of the civilians, and countenanced by

James I. A great oracle of the common law (Coke) was pleased in derision to call him Doctor Cow-heel. And Fuller in his "Worthies" remarks of this nickname: "a cow-heel, I assure you, well dressed, is good meat, that a cook, when hungry, may lick his fingers after it." Fuller observes that "many slighted Cowel's book who used it, it being questionable whether it gave more information or offence. But a higher offence was charged upon him, that he made the king to have a double prerogative, the one limited by law, the other unlimited; which being complained of in Parliament, his book was called in and condemned."

THE OLD SPIDER OF THE LAW.

The Earl of Hardwicke (Lord Chancellor) and Lord Holland, though frequently in office together, seldom agreed in any measure, and not unfrequently opposed each other's bills from mere pique. Lord Hardwicke had opposed a bill of Lord Holland's, when Mr. Fox, in the Upper House with some acrimony. Mr. Fox, in commenting on a private bill of Sir F. Delaval to enable him to sell an estate for the payment of his debts, threw out the following sarcasm on the Chancellor: "But where am I going? Perhaps I shall be told in another place, that this is a money bill, and shall be contravened upon this ground. How it can be so I know not. But this I know, that touch but a cobweb of Westminster Hall, and the *old spider of the law* is out upon you with all his younger vermin at his heels."

LAWYERS ABUSED IN HOUSE OF LORDS.

When Lord Hardwicke's Marriage Bill was in the House of Commons, Fox, afterwards Lord Holland, saying that one clause gave unheard-of power to parents on the marriage of minors, proceeded to lay open the chicanery and jargon of the lawyers, and the pride of their mufti, and drew a most severe picture of the Chancellor under the application of the story of a gentlewoman at Salisbury, who having a sore leg sent for a country surgeon, who pronounced that it must be cut off.

The gentlewoman, unwilling to submit to the operation, sent for another more merciful, who said he could save her leg without the least operation. The surgeons conferred. The ignorant one said: "I know it might be saved, but I have given my opinion: my character depends upon it, and we must carry it through." The leg was cut off!

VULGAR PREJUDICE AGAINST LAWYERS.

Lords Mansfield, Camden, Loughborough, Ashburton, and Grantley, once having taken part in a discussion in the House of Lords, on a bill to disfranchise Cricklade for bribery, Lord Fortescue broke forth and bewailed the degraded dignity of the House, lowered and tarnished by a profusion of lawyers. It was no longer a House of Peers, he said, but a mere court of law, where all the solid honourable principles of truth and justice were shamefully sacrificed to the low pettifogging chicanery and quibbles of Westminster Hall. That once venerable and august assembly now resembled a meeting of attorneys in a Cornish Court acting as barristers; the learned Lord on the woolsack seemed full of nothing but contradictions and law subtleties and distinctions and all that. The Chancellor was not deterred from his obstructive course by these observations; yet notwithstanding all his efforts, the bill was carried.

MORE HITS AT LAWYERS.

The sprightly Howell wrote in 1655: "Law is not only a pickpurse, but a purgatory. You know the saying they have in France. Translated it means: The poor clients are the birds, Westminster Hall the field, the judge the net, the lawyers the rats, the attorneys the mice of the Commonwealth. I believe the saying was spoken by an angry client. For my part, I like his resolution who said he would never use lawyer nor physician but upon urgent necessity. I will conclude with this rhyme:

Pauvre plaideur,
J'ai gran' pitié de ta douleur."

COBBETT'S HORROR OF BEING A LAWYER'S APPRENTICE.

"Gracious Heaven!" exclaimed William Cobbett, who preferred enlisting as a common soldier to legal occupations; "if I am doomed to be wretched, bury me beneath Iceland snows, and let me feed on blubber,—stretch me under the burning line, and deny me the propitious dews,—nay, if it be thy will, suffocate me with the infected and pestilential air of a democrat's club-room; but save me, whatever you do, save me from the desk of an attorney!"

HOW A SERJEANT WOULD LEARN TO BE A FRIAR.

Lord Chancellor Sir Thomas More in his youth wrote a ballad on the following story, then current: A serjeant was employed to recover a sum of money from a spendthrift who had taken sanctuary in a friend's house, where he confined himself so closely that the bailiff found it impossible to arrest his prisoner, and the creditor to obtain his money. At length it occurred to the serjeant to disguise himself as a friar, and by this means to gain access to the object of his search. He did so, and was successful. He dismissed the maid who ushered him to the room where the intended prisoner remained. The serjeant then disclosed his mace, and claimed his prisoner, who resented the base advantage taken, called him thief, and belaboured him; so that they fought and tore each other's hair and clothes, and tumbled and yelled. The mistress and maid had to return, who took the part of the debtor and kicked the serjeant out. The ballad has this stanza:

Wise men alway affirm and say
The best is for each man
Diligently for to apply
Such business as he can,
And in no wise to enterprise
Another facultie.

A man of law that never saw
The ways to buy and sell,
Weening to rise by merchandise,
I pray God speed him well.

This ballad Sir Thomas More used to sing at the table of Archbishop Morton with great applause.—Wood's Athen., Oxon.

MORALITY OF LAWYERS AND PREACHERS.

Dean Swift preached an assize sermon in Ireland, and afterwards dined with the judges. He had in his sermon considered the use and abuse of the law, and pressed rather hard on those counsellors who plead causes which they know in their consciences to be wrong. When dinner was over and the wine circulated, a young counsellor retorted upon the Dean; and after several warm contentions, the counsellor remarked, "If the devil was to die, I'm sure a parson could be found who for a little money would preach his funeral sermon." "Yes," said Swift, "I would gladly be the man, and I would then give the *devil* his due, just as I have this day done with his *children*."

THE LAWYERS' BELIEF IN CAPITAL PUNISHMENT.

In 1766 it was said that a meeting of lawyers, at Lord Mansfield's, was called to take into consideration the alarming growth of perjury, which had become "so very rife in our courts of justice as to threaten the most dangerous consequences. It was determined at this meeting that nothing short of capital punishment was sufficient to deter persons from the commission of this crime, and it was agreed that a bill should be prepared to make perjury in any court of justice, etc., a capital offence punishable with death."—17 Lady's Magazine, 667.

THE LAWYER'S HATRED OF CHANGE.

Roger North gives an instance of the lawyer's absurd attachment to mere forms. In his days the Court of Common Pleas used to sit in Westminster Hall, close to the great door, in order that suitors and their train might readily pass in and out. When the wind was in the north this situation was found very cold, and it was proposed to move the court further back, to a warmer place. "But

the Lord Chief Justice Bridgman," says North, "would not agree to it, as it was against Magna Charta, which says that the Common Pleas shall be held *in certo loco*, or in a certain place, with which the distance of an inch from that place is inconsistent, and all the pleas would be *coram non judice*. That formal reason hindered a useful reform; which makes me think of Erasmus, who, having read somewhat of English law, said that the lawyers were *doctissimum genus indoctissimorum hominum*."

One of the most extraordinary reasons which any lawyer has alleged against effecting law reforms is that assigned by the Chancellor d'Aguesseau. He was once asked by the Duke de Grammont whether he had ever thought of any regulation by which the length of suits and the chicanery practised in the courts could be terminated. "I had gone so far," said the Chancellor, "as to commit a plan for such a regulation to writing; but after I had made some progress, I reflected on the great number of advocates, attorneys, and officers of justice whom it would ruin: compassion for these made the pen fall from my hands. The length and number of law-suits confer on gentlemen of the long robe their wealth and authority: one must continue, therefore, to permit their infant growth and everlasting endurance." — C. Butler's Mem.

CHAPTER II.

ABOUT JUDGES.

JUDGES SLOW AND SWIFT.

It was said of one Chancellor, (Egerton, I think,) of a piercing judgment and quick despatch, that he ended causes without hearing; but of another, who was dull, slow, and dilatory, that he heard them without end.—*Camd. Soc. (No. 5), 65.*

It was said of Lord Eldon that he never wronged a suitor or perverted a principle. “I began to think,” said Sir Samuel Romilly, after the erection of the Vice-Chancellor’s Court, “that the tardy justice of the Chancellor is better than the swift injustice of his deputy (Leach, V.C.)”—*Romilly’s Life.*

SLOWNESS OF JUDGES.

When Sir Thomas Plumer was made the first Vice-Chancellor, Sir William Grant was Master of the Rolls, on whose retirement there stood five hundred causes entered on the Rolls List. People accounted for this, notwithstanding Grant’s despatch, by saying that causes had been set down at the Rolls for two reasons—one being, that Grant might hear them; and another being, that Plumer might not hear them. Plumer was so prolix and tedious, that he and Eldon together were hit off in the following epigram:

To cause delay in Lincoln’s Inn,
Two different methods tend;
His Lordship’s judgments ne’er begin,
His Honour’s never end.

Vice-Chancellor Sir John Leach was as much distin-

guished for "swift injustice" as Lord Eldon for endless doubt; and their merits were celebrated as follows:

In Equity's high court there are
Two sad extremes, 'tis clear;
Excessive slowness strikes us there,
Excessive quickness here.
Their source 'twixt good and evil brings
A difficulty nice.
The first from *Eldon's* virtue springs,
The latter from his *vice*.

A JUDGE'S PROLIXITY.

Sir Thomas Plumer was the first Vice-Chancellor appointed under the Act of 1813. All his urbanity was unable to overcome the dislike the great leaders of the bar had shown to the project of creating his court. His judgments were prolix to an insufferable degree, displaying great learning, and (what is even more rare) attention to the facts of the case he had to decide. Their diffuseness detracted much from their effect; yet his judgments were exceedingly forcible, though familiar in style. In the well-known case of *Cholmondeley v. Clinton*, he is said to have expressed himself after this wise: "Testator says to himself, 'I'll have the right heir of Samuel Rolle, and be he male or be he female, he's the man for my money!'"

He was unable to command the regular attendance of a bar. His usher, it has been said, might often be seen running about, even among the juniors, asking for employment: "Pray, sir, have you anything to move? Can you bring on anything before his Honour?"—2 *Law and Lawyers*, 85.

A JUDGE'S SWIFT INJUSTICE.

Sir John Leach, though by no means deficient as a lawyer, had a reckless, slashing way of getting through business, which often wrought great injustice. In this respect the Chancery Court, presided over by Lord Eldon, formed a strange contrast with the Rolls Court under the direction of Leach. The first the lawyers used to call the court of *Oyer sans terminer*, and the

latter the court of *Terminer sans oyer*. This expedition drew praises from some people, and the following epigram as a "satire in disguise":

A Judge sat on a judgment-seat,
A goodly Judge was he;
He said unto the Registrar,
"Now call a cause to me."
"There is no cause," said Registrar,
And laughed aloud with glee;
"A cunning Leach hath despatched them all;
I can call no cause to thee!"

A JUDGE WHO HAD NO TIME TO HEAR A CASE.

Philip of Macedon was king, judge, and lawgiver; and a poor old woman had often tried in vain to get him to listen to the story of her wrongs. The king at last abruptly told her "he was not at leisure to hear her." "No!" she exclaimed, "then you are not at leisure to be king!" Philip was confounded at this way of putting it, and seeing no answer to it, he called on her to proceed with her case. He ever after made it a rule to listen attentively to all applications addressed to him.

JUDGE BRIDLEGOOSE'S CONDUCT ON THE BENCH.

According to Rabelais, Judge Bridlegoose (supposed to mean a French Chancellor) admitted, when taxed with an outrageous judgment, that since he had become old he could not so easily distinguish the points on the dice as he used to do. And when pressed to explain how he came to resort to dice, he said he always, like their other worships, decided his cases by the throw of the dice, because chance and fortune were good, honest, profitable, and necessary to put a final stop to lawsuits. When pressed to explain why, if he used dice, he received so many pleadings and papers from the parties, he said he used to heap these heavy papers at opposite ends of the table, and when they were pretty evenly balanced he used his small dice; but when the papers of one party were larger than the other's, he used his large dice. Being again pressed to say why he kept the papers so long, seeing that he never read them, but decided his

cases by the dice, he gave three reasons. First, because it was decorous and seemly to keep them; secondly, he used to turn them over and bang and toss them about as a healthy bodily exercise; and, thirdly, he kept them so long in order that the issue might ripen, and the parties might be more reconciled to bear their misfortune when it came to them.

These lucid reasons convinced his censors that he was about as efficient as his neighbours in his day and generation, which was about the year 1545.

THE CASE OF HALKERSTON'S COW.

A tenant of Lord Halkerston, a judge of the Scotch Court of Session, once waited on him with a woeful countenance, and said: "My Lord, I am come to inform your lordship of a sad misfortune. My cow has gored one of your lordship's cows, and I fear it cannot live." "Well, then, of course, you must pay for it." "Indeed, my lord, it was not my fault, and you know I am but a very poor man." "I can't help that. The law says you must pay for it. I am not to lose my cow, am I?" "Well, my lord, if it must be so, I cannot say more. But I forgot what I was saying. It was my mistake entirely. I should have said that it was your lordship's cow that gored mine." "Oh, is that it? That's quite a different affair. Go along, and don't trouble me just now. I am very busy. Be off, I say!"

THROWING STONES AT JUDGES.

Judge Richardson in going the Western Circuit, had a great flint stone thrown at his head by a malefactor then condemned (who thought it meritorious and the way to be a benefactor to the Commonwealth to take away the life of a man so odious), but leaning low on his elbow in a lazy reckless manner the bullet flew too high, and only took off his hat. Soon after, some friends congratulating his deliverance, he replied (as his fashion was to make a jest of everything), "You see now, if I had been an upright judge (intimating his reclining posture) I had been slain."—Camd. Soc. (No. 5), 53.

A JUDGE'S AFFECTATION OF RECLUSE HABITS.

"When I was Chancellor," says Lord Bacon, "I told Gondomar, the Spanish ambassador, that I would willingly forbear the honour to get rid of the burthen; that I had always a desire to lead a private life." Gondomar answered, that he would tell me a tale: "My lord, there was once an old rat that would needs leave the world; he acquainted the young rats that he would retire into his hole, and spend his days in solitude, and commanded them to respect his philosophical seclusion. They forbore two or three days; at last, one hardier than his fellows ventured in to see how he did; he entered, and found him sitting in the midst of a rich parmesan cheese!" —Bacon's Apophth.

A JUDGE KEEPING FINE COMPANY.

Sir John Leach was not only a clever lawyer, but also a fine gentleman. He was by no means unknown in the West End, and was always esteemed a desirable acquisition at the card-tables of venerable dowagers. He was (if the phrase be allowed) always courtly in court; and although very fond of saying sharp and bitter things, always did so in accents most suave and bland. No submission could meliorate his temper, no opposition asperate his voice. He was very fond of pronouncing judgment without assigning a single reason. He would pronounce the fatal decree in a tone of solemnity, betraying, however, the opinion he entertained of the application. In his days, as is well known, the Rolls Court sat only in the evening. The appearance the court then presented, to a stranger seeing it for the first time, must have been very absurd; for when his Honour had taken his seat, two large fan shades were placed in such a position as not only excluded the light from the Master's eyes, but rendered him invisible to the court. After the counsel who was addressing the court had finished, and resumed his seat, there would be a painful pause for a minute or two, when at length, out of the darkness which surrounded the chair of justice, would come a voice, distinct,

awful, solemn, but with the solemnity of suppressed anger, "The bill is dismissed with costs." No explanations, no long series of arguments advanced to support this conclusion—the decision was given with the air of a man who knows he is right, and that only folly and villainy could doubt the propriety of his judgment.—2 Law and Lawyers, 90.

A JUDGE ALWAYS ANTICIPATING AND JUMPING TO CONCLUSIONS.

Curran was often stopped by Lord Avonmore in his argument by the remark, "Mr. Curran, I know your cleverness, but it's quite in vain for you to go on: I see the drift of it all, and you are only giving yourself and me unnecessary trouble." One day, Curran being too often stopped in this way, thus addressed the judge: "Perhaps, my lord, I am straying, but you must impute it to the extreme agitation of my mind. I have just witnessed so dreadful a circumstance, that my imagination has not yet recovered from the shock." The judge was all attention: "Go on, Mr. Curran." "On my way to court, my lord, as I passed by one of the markets, I observed a butcher proceeding to slaughter a calf. Just as his hand was raised, a lovely little child approached him unperceived, and, terrible to relate—I see the life-blood gushing out still—the poor child's bosom was under the butcher's hand, when he plunged the knife into—into——" "Into the bosom of the child!" cried out the judge with great emotion. "Your lordship sometimes anticipates—it went right into the neck of the calf!"

JUDGE^F READING NEWSPAPERS ON THE BENCH.

Lord Chancellor Hardwicke used to declare that "he did not take his place upon the bench to write letters to his correspondents, or to read the newspaper." Lord Campbell observes that this last practice has occasionally been carried to an indecorous and inconvenient length. A glance at a newspaper may be permitted to a judge during a tedious reply, as a hint to the counsel against prolixity; and such was the habit

of Lord Mansfield who was ever completely master of all the facts, and all the law of every case that came before him. But Lord Campbell had seen a judge indulge his curiosity by turning over the unwieldy pages of the *Times* while a counsel has been opening in a condensed manner a very important and complicated case, requiring the closest attention of a judge, however quick, learned and discriminating.—5 Camp. Chanc., 46.

On one occasion, when Dunning was arguing a case before Lord Mansfield, who was reading the newspaper, he stopped, whereupon the judge said, "Pray, go on, Mr. Dunning." The counsel paused, and significantly answered, "I fear, my lord, that I am interrupting your lordship's more important occupations. I will gladly wait until your lordship finds leisure to attend to my client and his humble counsel."

JUDGES WRITING LETTERS ON THE BENCH.

After Sir Samuel Romilly and Mr. Leach had gone over the arguments in cases before Lord Eldon, his attention ceased to be engaged, although he seemed to listen. In reality, he was writing a gossiping letter to Lady Frances, his daughter, or Mrs. Ridley, his sister-in-law. He found this occupation very agreeable, and he was pleased to have undisturbed leisure for it—laying the flattering unction to his soul that while he was sitting on the bench, and counsel were speaking in his hearing, he could not be accused of neglecting his duty.—7 Camp. Chanc., 622.

A LORD CHANCELLOR WRITING HIS LETTERS ON THE BENCH.

Lord Brougham's habit which caused him the greatest peril was writing letters while he was sitting on the bench, and supposed to be listening to arguments from the bar. He did not resort to the art of the wily Eldon, who, when writing letters in court to his private friends, folded the paper as if he had been taking notes of the

argument. Lord Chancellor Brougham, above all disguise, many times in the course of a morning would openly receive letters on the bench, read them, and write, seal and despatch answers, meanwhile listening to the counsel and asking them questions. This habit was particularly distasteful to that very petulant though very learned and able counsel Sir Edward Sugden (afterwards Lord St. Leonards), who tried to correct it, but was unlucky on the occasion which he took and the method he employed for that purpose. As the most marked and effectual intimation of his displeasure, he suddenly stopped in the middle of a sentence while the Chancellor was writing. After a considerable pause, the Chancellor, without raising his eyes from the paper, said, "Go on, Sir Edward; I am listening to you." *Sugden* said, "I observe that your lordship is engaged in writing, and not favouring me with your attention." *Chancellor*. "I am signing papers of mere form. You may as well say that I am not to blow my nose or take snuff while you speak." Sir Edward sat down in a huff; but on this occasion he was laughed at, and the Chancellor was applauded.—8 Camp. Chanc., 386.

A JUDGE NOT LISTENING ATTENTIVELY.

Sir W. Pringle, a Scotch advocate, was apt to be very passionate when he thought one of the judges did not listen to him properly. One day, before Lord Forglen, he opened a case, and the opponent, among other objections, insisted on one—namely, that notice had not been regularly posted on the wall, which was the mode of giving due notice at that time. Sir Walter replied to all the objections with accuracy and spirit, but took no notice of the trifling point of form about the notice. Lord Forglen said, "Sir Walter, you have argued your case very well, but what do you say to the wall?" "Indeed," said he, "my lord, I have been speaking to it this half-hour," and off he went in a great passion.

Mr. Andrew Balfour used to say of Lord Kames as a judge: "He has the obstinacy of a mule and the levity of a harlequin."

A JUDGE IN CONSULTATION WITH HIS DOG.

One day when Curran was arguing in the Irish Court of Chancery, the Lord Chancellor, Lord Clare, a determined enemy of that counsel, brought a large Newfoundland dog upon the bench with him, and during the progress of the argument he lent his ear often to the dog rather than the counsel, which struck the whole bar as being very indecent. At one important passage the judge turned aside and began to fondle the animal. Curran stopped at once. "Go on, go on, Mr. Curran," said Lord Clare. "Oh, I beg a thousand pardons, my lord; I really took for granted that your lordship was employed in consultation."—Phillips' Curran, 148.

A CHANCELLOR TEARING UP PAPERS WITH STATE SECRETS IN COURT.

What completed the rupture between Lord Chancellor Brougham and the *Times* newspaper in 1834, and made it irreparable, was his carelessness in allowing to come to the knowledge of the *Times* the following "secret and confidential" letter he received one morning when sitting on the bench in the court of Chancery in Lincoln's Inn Hall:—

Dear Brougham—What I want to see you about is the *Times*—whether we are to make war on it, or come to terms.

Yours ever,
ALTHORP.

This Lord Brougham read during the argument of a case in the Court of Chancery, answered immediately, and tore it up, throwing away the fragments. These fragments were picked up by a shorthand writer, put together, and carried next day to the office of the *Times*. It so happened that this very day some information which the editor asked from the Government was abruptly refused. The inference drawn, was, that by the Chancellor's advice a determination had been formed by the Government to make war on the *Times*, and the *Times* determined to make war upon Brougham,

sparing for a while at least the main body of his colleagues. Accordingly, while a general support was given to Lord Melbourne's Government, a series of bitter attacks began upon the devoted Chancellor.—8 Camp. Chanc., 442.

A JUDGE WHO WELL BECAME THE CUSHION OF THE PLEAS.

Roger North, in his life of Guilford, thus describes Sir M. Hale when Chief Justice of the Common Pleas: "He became the cushion exceedingly well. His manner of hearing patient, his directions pertinent, and his discourses copious, and, although he hesitated often, fluent. His stop for a word, by the produce, always paid for the delay; and on some occasions he would utter sentences heroic. He was allowed on all hands to be the most profound lawyer of his time; and he knew it. But that did not serve him; he would be also a profound philosopher, naturalist, poet and divine. When he was off the seat of justice, his conversation was with none but flatterers. This great man was most unfortunate in his family; for he married his own servant-maid, and then for excuse said there was no wisdom below the girdle. All his sons died in the sink of lewdness and debauchery. Although he was very grave in his own person, he loved the most bizarre and irregular wits in the practice of the law before him, most extravagantly. And, besides, he was the most flatterable creature that ever was known; for there was a method of resignation to him, and treating him with little meals, and private, with his pipe at ease, which certainly captivated him. So Sir George Jeffries gained as great an ascendant in practice over him as ever counsel had over a judge. In short, to give every one his due, there was in him the most of learning and wisdom, joined with ignorance and folly, that ever was known to coincide in the character of any one man in the world."

A WARY JUDGE.

When Sir John Fitz James was made Lord Chief Justice by Henry VIII., Chancellor Audley was anxious

to throw upon that judge part of the responsibility of condemning Sir Thomas More for refusing the oath of supremacy. Accordingly, the Chancellor asked the Chief Justice in open court whether the indictment of Sir T. More were sufficient or no. To whom our judge warily returned, "My lords all, by St. Gillian" (which was ever his oath), "I must needs confess that, if the Act of Parliament be not unlawful, then the indictment is not in my conscience insufficient."—Fuller's Worthies.

A CAUTELOUS JUDGE WHO WAS FREE FROM TREPANS.

Roger North says his brother, "the Lord Chief Justice, was very free from trepans, as being known to be sagacious and cautelous, and not apt to give opportunities; for he entered not into promiscuous companies nor dealt in the bottle; but had his friends often, and his servants always about him. Once after dinner a servant told him a gentleman waited in the next room (which he used as a closet) to speak with him; and his lordship, as he passed by, saw a couple of fellows stand in the passage, which made him think of eavesdropping: And being entered the gentleman came up to him, and said, 'My lord, my name is Claypole.' His lordship instantly knew him to be (as he was) a descendant of the once Lord Claypole, one of Cromwell's sons-in-law: and then turned round upon his heel, and passing his two eavesdroppers, who were come nearer the door, went to his company and merrily told them what a vision he had seen. What his counterfeit lordship's business was could neither be known or guessed at. But in such cases being alone with any person, that person is master, and may swear his pleasure."

MERRY ENOUGH FOR A JUDGE.

When Sir John Walter, in the time of Charles I., was made a judge, it was said of him that he became when a pleader, eminent; when a judge, *more* eminent; when no judge, *most* eminent. This last allusion was to his being ousted of his place as Chief Baron of Exchequer about the illegality of the loan. When he left the bar, he

temper was greatly changed for the better; and Fuller says, in his "Worthies," that he was most passionate as Sir John, most patient as Judge Walter, and great his gravity in that place. When Judge Denham, his most upright and worthy associate in the Western Circuit, once said to him, "My Lord, you are not merry!" he replied, "Merry enough for a judge!"

THE SLEEPING JUDGE.

Sir John Doddridge, Justice of the King's Bench, who died in 1628, was called the sleeping judge. Fuller says in his "Worthies": "He was commonly called the sleeping judge, because he would sit on the bench with his eyes shut, which was only a posture of attention to sequester his sight from distracting objects, the better to listen to what was alleged and proved." Fuller further says, that it was hard to say whether this judge was better artist, divine, civil or common lawyer, though he fixed on the last for a profession. He became noted for exclaiming against the venal and corrupt practices of his day; and he used this famous expression: "That as old and infirm as he was he would go to Tyburn on foot to see such a man hanged that should proffer money for a place of that nature." Sir John was obviously an advanced thinker for his own day and generation.

A JUDGE WITH LEAD IN HIS HEAD.

A very prosy judge was laying down the law at inordinate length to a jury on circuit, and remarking on the evidence of a witness who had spoken to seeing the prisoner steal some copper. The judge who was constantly calling the metal "lead," and on each occasion was corrected by counsel, said "I beg your pardon, gentlemen—copper; but I can't get the lead out of my head!" The whole court laughed at this unconscious sally, and kept up the laughter rather too long, which rather surprised the judge.

A JUDGE WITH ELEVEN SONS AND ELEVEN DAUGHTERS.

Sir Lewis Pollard, a Justice of the King's Bench in the time of Henry VIII., made his name memorable for his creditable family. He had eleven sons, of whom four attained knighthood. He had also eleven daughters, married to the most potent families in Devonshire, "so that (what is said of Cork in Ireland, that all the inhabitants therein are kin) by this match almost all the ancient gentry in that county are allied." Fuller in his "Worthies" says: "There was a tradition in this family, that the lady glassing the window at Nimet Bishop, in her husband's absence at the term in London, caused one child more than she then had to be set up, presuming (having had one-and-twenty already, and usually conceiving at her husband's coming home) she should have another child; which inserted in expectance, came to pass accordingly. This memorable knight died in 1540."

A PRISONER WHO BECAME CHIEF JUSTICE.

Chief Justice Pemberton in his youth managed by gambling and drink to get rid of all his means, and was imprisoned in the Fleet. He professed there to have a vision and to reform, and took to studying the law. The other prisoners began to look on him as an authority, and called him "Counsellor," and "apprentice of the law." He bought books with the fees they gave him for advice. He came out of prison a sharper at the law, having prevailed on his creditors to such an extent that they thought he would sooner pay their debts by letting him out. He was called to the bar in due time, and became an ornament of the bench. After being made a puisne judge, he was displaced; he returned to the bar, and recovered his practice, and afterwards was made Chief Justice, on the dismissal of Scroggs. He afterwards again returned to the bar on being displaced, and was an able and zealous counsel for the seven bishops.

A HIGHWAYMAN BECOMES A JUDGE.

Aubrey relates of Chief Justice Popham thus: "For severall yeares young Popham addicted himselfe but little to the studie of the lawes, kept profligate company, and was wont to take a purse with them. His wife considered her and his condition, and at last prevailed with him to lead another life, and to stick to the studie of the lawe, which, upon her importunity, he did, being then about thirtie years old. He spake to his wife to provide a very good entertainment for his comerades to take his leave of them, and after that day fell extremely hard to his studie, and profited exceedingly. He was a strong, stout man, and could endure to sit at it day and night; became eminent in his calling, had good practice, was called to be a serjeant and a judge."

This we certainly know, says Lord Campbell, that he became a consummate lawyer, and was allowed to be so by Coke, who depreciated all contemporaries, and was accustomed to sneer at the "book-learning" of Francis Bacon. He was notorious as a "hanging judge." Not only was he keen to convict in cases prosecuted by the Government, but in ordinary larcenies; and above all in highway robberies, there was little chance of an acquittal before him.

CHALLENGING A CHIEF JUSTICE.

Moore says that Elwyn mentioned to him an anecdote of Lord Byron having once taken a challenge from —— to Chief Justice Best, on account of the latter having said that —— was a great rascal. "I confess, my lord, I did say that —— was a great rascal, and I now repeat the assertion to your lordship. But are you aware, Lord Byron (he added, laughing), of the consequences you expose yourself to by bringing a challenge to a Chief Justice?" Lord Byron was soon made to feel the ridicule of the step and they parted very good friends, leaving ——'s honour to shift for itself.

Moore says he afterwards mentioned this story to the Attorney-General of 1829, who doubted it, but advised

him to write to Best, who would be very good-humoured, and would give an answer.—Moore's Mem.

HANGING JUDGES AND THEIR REASONS.

Justice Buller was said always to hang for sheep-stealing, avowing as a reason that he had several sheep stolen from his own flock. Justice Heath, acting more on principle, used to hang in all capital cases, because he knew of no good secondary punishments. Said he, "If you imprison at home, the criminal is soon thrown upon you again, hardened in guilt. If you transport, you corrupt infant societies, and sow the seeds of atrocious crimes over the habitable globe. There is no regenerating of felons in this life, and for their own sake, as well as for the sake of society, I think it is better to hang." When sitting in the Crown Court at Gloucester, Buller asked a lying witness from what part of the county he came, and being answered, "From Bitton, my lord," he exclaimed, "You do seem to be of the Bitton breed, but I thought I had hanged the whole of that parish long ago."—6 Camp. Chanc., 154.

MORE HANGING JUDGES.

Justice Page was well known by the name of the hanging judge. One day Crowle, the punning barrister, was on circuit, and being asked by a friend, if the judge was not *just behind* them, at once replied, "I don't know, but I am sure he never was *just before*."

When this old judge was decrepit, he perpetrated an excellent joke upon himself. As he was coming out of court shuffling along, a friend stopped him and inquired after his health. "My dear sir," the judge replied, "you see I keep just *hanging on*—*hanging on*."

Counselloer Grady, of the Irish Bar, said he heard of a relentless judge, who was known by the name of the hanging judge, and who was never known to have shed a tear but once, and that was at a representation of the Beggars' Opera, when Macheath got a *reprieve*!

As a criminal judge, Lord Ellenborough was reputed severe. During one day at an assize dinner, some one offered to help him to some fowl. "No, I thank you," said his lordship, "I mean to try that beef." "I am sure you'll like it, my lord," said Jekyll, "it is well-*hung* beef."

Lord Kenyon was not such a "hanging judge" as some of his colleagues. A barrister once related the following anecdote, in a debate in the House of Commons:—

"On the Home Circuit a young woman was tried for stealing to the amount of forty shillings in a dwelling-house. It was her first offence, and was attended with many circumstances of extenuation. The prosecutor came forward, as he said, from a sense of duty; the witnesses very reluctantly gave their evidence; and the jury still more reluctantly their verdict of guilty. The judge passed sentence of death. The unhappy prisoner instantly fell lifeless at the bar. Lord Kenyon, whose sensibility was not impaired by the sad duties of his office, cried out in great agitation from the bench, "I don't mean to hang you, good woman,—I don't mean to hang you. Will nobody tell her I don't mean to hang her?"

A HANGING JUDGE FOILED.

When Hone had been acquitted on his first trial for blasphemy, and this was related to the enfeebled Chief Justice Ellenborough, the judge's energy was revived, and he swore that at whatever cost he would preside in court next day himself, so that conviction might be certain, and the insulted law might be vindicated. Accordingly he appeared in court pale and hollow-visaged, but with a spirit unbroken, and more stern than when his strength was unimpaired. As he took his place on the bench, "I am glad to see you, my Lord Ellenborough," shouted Hone; "I know what you are come here for; I know what you want." "I am come to do justice," retorted the noble and learned lord; "my only wish is to see justice done." "Is it not rather, my lord," said Hone, "to send a poor bookseller

to rot in a dungeon?" The Chief Justice had the mortification to hear the words "Not Guilty" pronounced, followed by a tremendous burst of applause, which he could not even attempt to quell. Bishop Turner, who was present at the trial, and accompanied the Chief Justice home in his carriage, related that all the way he laughed at the tumultuous mob who followed him, remarking that "he was afraid of their *saliva*, not of their bite;" and that passing Charing Cross he pulled the check-string, and said, "It just occurs to me that they sell the best red-herrings at this shop of any in London: buy six." The popular opinion, however, was, that Lord Ellenborough was killed by Hone's trial, and he certainly never held up his head in public after.— 3 Camp. C.J.s, 225.

Another version is that the article was not "herring," but "black pudding," which was obviously a much more natural diet for a hanging judge.

RISKS OF A HANGING JUDGE.

Aubrey says that Sir Miles Fleetwood, who was Recorder of London when James I. came to England, once harangued the City merchants to this effect: "When I consider your wealth I do admire your wisdom, and when I consider your wisdom I do admire your wealth." Sir Miles was also noted for being a severe hanger of highwaymen, so that the fraternity resolved to make an example of his worship. So they lay in wait for him one day not far from Tyburn, as he was on his way from his house in Buckinghamshire. They had a halter in readiness, brought him under the gallows, tied his hands behind his back, and then left him to the mercy of his horse, which he called Ball. But the good horse Ball stood still instead of running away. So Sir Miles was saved, for somebody soon came along the road and released him, and out of gratitude to Ball he kept that horse as long as he lived.

A JUDGE UNEASY AT SENTENCING A PRISONER.

Justice Wiles about 1780 sentenced a boy at Lancaster to be hanged, with the hope of reforming him by frighten-

ing him, and he ordered him for execution next morning. The judge awoke in the middle of the night, and was so affected by the notion that he might himself die in the course of the night, and the boy be hanged, though he did mean that he should suffer, that he got out of his bed and went to the lodgings of the High Sheriff, and left a reprieve for the boy, or what was to be considered equivalent to it, and then, returning to his bed, spent the rest of the night very comfortably.

JUDGES AND SURE-FOOTED HORSES.

When Lord Campbell was Attorney-General, Chief Justice Tindal, a most amiable as well as witty friend, used to tell the following story of him:—"I had a stumbling horse that had come down with me several times, to the great peril of my life, and many of my friends strongly advised me to get rid of him; but he was very quiet, and a great favourite, so that I continued to ride him, till one day I met Campbell as I was dismounting at Westminster, who said, 'That is a nice horse you have got, Chief Justice.' I answered, 'Yes, but he has come down with me several times, and I am advised to part with him.' 'Don't, my dear Chief Justice,' cried Mr. Attorney; 'I'll warrant you he is very sure-footed for all that.' I walked home, and sold the animal next morning."—6 Camp. Chanc., 139.

JUDGES' CENSURE OF FRIVOLOUS QUESTIONS.

The last day Lord Tenterden ever sat in court (which was on the trial of the magistrates of Bristol)—to rebuke a counsel who was wasting time by irrelevant questions respecting a journey performed by the mayor in a post-chaise and four—he observed with much solemnity, "Sir, you have forgot to ask him the colour of the jackets of the postilions." He was taken dangerously ill the same night; and having in his delirium still dreamed of the trial, he expired with these words on his lips: "Gentlemen of the jury, you will now consider of your verdict."—3 Camp. C.J.s, 580.

Justice Maule was trying a case, and was much per-

plexed by the confused way in which the counsel was opening it. The Judge at last interrupted him: "I wish you would put your facts in some kind of order. Chronological order is one way, and perhaps the best; but I am not particular: any order you like—*alphabetical* order if you prefer it!"

COUNSEL FRIGHTENING A YOUNG JUDGE.

O'Connell had to defend a prisoner for a capital crime, and the defence was said by the attorney to be hopeless. Serjeant Lefroy happened to be acting for the judge, who had been suddenly indisposed, and being then young and his character known to O'Connell, the latter purposely put several inadmissible questions to the witness, which of course were objected to by the opposite counsel. The Serjeant at last rather peremptorily stopped further questions of the same kind. O'Connell then with great warmth said, "As you refuse me permission to defend my client, I leave his fate in your hands,—his blood be on your head if he be condemned." He left the court at once with majestic stride, in a huff, and paced up and down outside the court for half an hour. At the end of that time his attorney rushed out of court, exclaiming, "He's acquitted! he's acquitted!" This stratagem was successful, and O'Connell with complacency told his friends, that he had intended to throw the responsibility of the conviction on the judge.

A JUDGE REBUKED FOR HIS REBUKE.

Lord Ellenborough presided at a trial of the publishers for a newspaper libel, Mr. Brougham being their counsel, who made a fervid address on their behalf. The judge in summing up remarked that the defendants' counsel had imbibed the noxious spirit of his client, and had inoculated himself with all the poison and *virus* of the libel. Mr. Brougham, when his client was brought up for judgment, thus complained of these animadversions: "My lord, why am I thus identified with the interests of my client? I appear here as an English advocate, with the privileges and responsibilities of that office; and no man

shall call in question my principles in the faithful and honest discharge of my duty. It is not assuredly to those only who clamour out their faith from high places, that credit will be given for the sincerity of their professions." The judge discreetly remained silent.

JUDGE PUTTING DOUBTFUL QUESTIONS.

Mr. Jeremiah Mason, the eminent American lawyer, was in a case when the judge put a question to a witness which was of doubtful admissibility. Mason at once bluntly interfered with this remark: "If your Honour puts that question for us, we don't want it: if you put it for the other side, then I object, that it is not evidence!"

A JUDGE WHO WAS GENERALLY RIGHT.

"Lord Mansfield," once said Lord Thurlow, "was a surprising man; ninety-nine times out of a hundred he was right in his opinions or decisions. And when once in a hundred times he was wrong, ninety-nine men out of a hundred could not discover it. He was a wonderful man!" Such an eulogy as this is worth all the snarling criticism of Johnson and Parr; the first of whom hated him because he was not a Tory, and the second because he was not a Whig."

A JUDGE SHAKING HIS HEAD AT A PROPOSITION.

When Lord Mansfield once exclaimed to Mr. Dunning, as he was laying down a legal point, "Oh, if that be law, Mr. Dunning, I may burn my law books!" "Better *read them*, my lord," was the ready retort.

In a similar manner, an Irish judge shook his head as Mr. Curran was elaborating one of his points to a jury. "I see," said Mr. Curran, "I see, gentlemen, the motion of his lordship's head: common observers might imagine that it implied a difference of opinion, but they would be mistaken. It is merely accidental. Believe me, gentlemen, if you remain here many days, you will yourselves perceive that when his lordship *shakes his head*, there's NOTHING IN IT!"—Phillips' Curran, 57.

KEEPING A WEAK JUDGE RIGHT.

When business is divided in a court between two great leaders without competitors, justice may be substantially administered, although not always to the satisfaction of the losing party, who expects his counsel to make the best fight he can in return for his fee. The late Chief Justice Gibbs told Lord Campbell, when he led the Western Circuit against Serjeant Lens, they kept a weak judge right. "Thus," said he, "I once, knowing I had no case, opened a nonsuit before my brother Graham. He was for deciding in my favour; but I insisted upon being nonsuited, and saved my client the expense of having a verdict in his favour set aside."

A JUDGE AND HIS AVARICE.

Avarice was Lord Hardwicke's predominant passion. It was in this way that he got the name of "Judge Gripus." He was one of a commission which, in the year 1740, reported in favour of some very extensive reforms in the Court of Chancery; but although he concurred in this report, and possessed the ability of carrying the recommendations which it embodied into effect, he made no effort towards such an end, preferring the continuance of abuses to any change which would reduce his income or diminish his patronage. "My lord," George II. one day said to him, "I observe that there never is a place vacant but you have some friend on whom you wish it to be bestowed."—*I Law and Lawyers*, 356.

A JUDGE CALLING COUNSEL A "HARANGUE."

Lord Eskgrove, a Scotch judge, before whom Lord Brougham practised at the Scotch bar in his early days, and who was annoyed by the interminable vehemence and pertinacity of that advocate, said one day, "I declare that man Broom, or Broug-ham, is the torment of my life!" The judge's revenge, as usual, consisted in sneering at Brougham's eloquence by calling it, or him, "*the Harangue*," and he used to address the jury in this way:

“Well, gentlemen, what did *the Harangue* say next? Why, *it* said this” (mis-stating it); “but here, gentlemen, the Harangue was most plainly wrong, and not intelligible.”—Cockburn’s Mem., 122.

A JUDGE BLAMING COUNSEL WHO THUMPED THE TABLE.

Mr. James Ferguson, a Scottish advocate, was an eloquent speaker, and used to be very energetic in his address, occasionally beating with violence the table, in order to clinch an argument. One day he was arguing a case before Lord Polkemet with great vigour, when the judge coolly interrupted him with this callous remark: “Maister Jemmy, dinna dunt: ye may think ye’re dunting it *intill me*, but ye’re juist dunting it *oot o’ me, man!*”

JUDGE TELLING COUNSEL TO DECLAIM.

A Scotch counsel named Baird was in a dull, technical way once stating a dry case to Lord Meadowbank, an acute, vigorous, and learned judge, who was sitting alone. This did not please the judge, who thought that his dignity required a grander tone. So he dismayed poor Baird, than whom no man could have less turn for burning in the forum, by throwing himself back in his chair, and saying, “Declaim, sir!—why don’t you declaim? Speak to me as if I were a popular assembly.”—Cockburn’s Mem., 144.

JUDGE CALLING TO COUNSEL—“STOP.”

Sir C. Cresswell, when judge, used sometimes a very haughty and contemptuous tone towards counsel, and one day, while taking down notes of the witness’s evidence, had occasion to call out frequently, as judges often do, to the counsel to “Stop”—so that he might have time to bring up his notes of what witnesses say. He called out “Stop” so often and so offensively, and, as was generally thought, unnecessarily, that at last counsel went on without attending to it. The judge then addressed the counsel by name, and complained that he went on too fast, and

did not give time to take the evidence down in writing, and asked if he did not hear the call to *stop*. To which the counsel blandly retorted, "Oh, my lord, I thought your lordship had been calling to the usher of the court."

A SQUINTING JUDGE.

Sir John Trevor, Master of the Rolls, and a boon companion of Lord Chancellor Jeffreys, was brought up as an errand-boy in a relative's office, expressly to learn the knavish part of the law, as he squinted abominably. Yet he became Speaker of the House of Commons and a Master of the Rolls; but was understood to traffic in bribes; and he gambled and betted heavily. When Speaker, he had to sit for six hours hearing himself abused, and then to put the motion to the House "whether he (himself) had been guilty of high crimes and misdemeanours." He was expelled the House for bribery, when a wit remarked that "Justice was blind, but Bribery only squinted."

Once meeting Bishop Tillotson, he muttered, "I hate a fanatic in lawn sleeves." The Bishop retorted, "And I hate a knave in any sleeves."

His avarice was a foible. One day a Welsh relative was introduced to his room as he was sitting at his wine, whereupon he broke out upon his servant thus: "You rascal, you have brought my cousin, Roderick Lloyd, Esq., Prothonotary of North Wales, Marshal to Baron Price, etc., etc., up my back stairs. Take him down again instantly, and bring him up my front stairs." During this operation Sir John stowed away all his wine, so as to avoid being obliged to dispense a little to his relative during the visit.

A JUDGE GREAT AT ARBITRATION.

Lord Dun was a Scotch judge in 1704, and very distinguished for his piety. Thomas Coutts, the banker, used to relate of him that when a difficult case came before his lordship as Lord Ordinary, he used to say, "Eh, Lord, what am I to do? Eh, sirs, I wish you would make it up!"—3 Chambers' Dom. Ann. Scot.

A JUDGE'S WIFE ON THE RIGHT SIDE.

When the great case of ship money and Hampden was argued, in 1635, "Judge Croke (of whom 'I speak knowingly' says Whitlocke) was resolved to deliver his opinion for the king, and to that end had prepared his argument. Yet a few days before he was to argue, upon discourse with some of his nearest relations and most serious thoughts of this business, and being heartened by his lady, who was a very good and pious woman, and told her husband upon this occasion that 'she hoped he would do nothing against his conscience for fear of any danger or prejudice to him or his family; and that she would be contented to suffer want or any misery with him rather than be an occasion for him to do or say anything against his judgment and conscience.' Upon these and many the like encouragements, but chiefly upon his better thoughts, he suddenly altered his purpose and arguments; and when it came to his turn, contrary to expectation, he argued and declared his opinion against the king. All the judges except Croke and Hutton were for the king."

A JUDGE WHO WAS "THE COMMON FRIEND."

Mr. Beaumont Hotham was appointed a judge, being thought by his contemporaries not very fit for that office, and yet he continued a judge for thirty years. He had had little experience at the bar, but had much good sense and most courteous and obliging manners. His knowledge of law was so scanty that when any difficulty arose he was in the habit of recommending the case to be referred to arbitration, thus acquiring among the wags of Westminster Hall the nickname of "the common friend."

A CONSCIENTIOUS JUDGE.

Mr. Justice Lawrence was famed for his courtesy and conscientiousness. By a codicil to his will, he directed the costs of an action to be paid to a certain litigant who had been defeated in an action tried before him, and on

which occasion the judge considered that he had decided wrongly, thereby causing the loss.

A JUDGE WHO TURNED THE MATTER OVER IN HIS MIND.

Sir. Thomas Sewall, Master of the Rolls, when in Parliament had occasion to take part in the great debate on the illegality of *general warrants*, and strongly urged the adjournment of the debate, because it would afford him an opportunity to examine his books and authorities, so that he might then be prepared to give a final opinion on the subject, but which he was not then prepared to do. At the adjournment he appeared in the House in his great wig, as his custom was, and then gravely told the House of Commons that "he had turned the matter over as he lay on his bed upon his pillow, and after ruminating and considering upon it a great deal, he could not help declaring that he was of the *same opinion as before*." On this result, Charles Townshend rose, and said "he was very sorry that what the learned gentleman had found in his night-cap he had lost in his periwig."

A JUDGE TURNING IT OVER IN WHAT HE IS PLEASED TO CALL HIS MIND.

When Lord Westbury was at the bar, he had occasion to appeal against a decree of a Vice-Chancellor, and was commenting on that decree with great scorn, and tearing it to tatters before the Court of Appeal. After having forcibly destroyed the decree, and all the grounds on which it rested, Mr. Bethell added this: "And yet this professes to be a decree made by his Honour after the most mature reflection, and after turning it over and over in what *he is pleased to call his mind*!"

A JUDGE'S CANDID OPINION OF HIS BRETHREN.

Baron Thomson, of the Court of Exchequer, was asked how he got on in his court with the business, when he sat between Chief Baron Macdonald and Baron Graham.

He replied, "What between snuff-box on one side, and chatterbox on the other, we get on pretty well!"

Judge Story says that Chief Justice Marshall was in company with the eminent American advocates Dexter and Fisher Ames. The chief commenced a conversation, or rather an opinion, for he was almost *solus* in the dialogue, which lasted some three hours. On breaking up, the two latter commenced on their way homeward to praise the depth and learning of the chief. Said Ames, after a short talk, "To tell the truth, Dexter, I have not understood a word of his argument for half an hour." "And I," rejoined Dexter, "have been out of my depth for an hour and a half."

The Chief Justice's great phrase was "It is admitted." As he was a powerful reasoner, it was often remarked, "Once admit his premises, and you are forced to his conclusions."

Said Daniel Webster to me once, "When Judge Marshall says, 'It is admitted, sir, so and so,' I am preparing for a bomb to burst over my head, and demolish all my points."—Judge Story's Life.

A PUISNE JUDGE AND HIS CHIEF.

Roger North says of his brother Lord Chief Justice North: "Judge Atkins made an open opposition to his lordship about the disposal of a Prothonotary's place, which is known to belong to the Chief Justice. But he thought fit to stir up his brethren to put in for a share, and there were some words and altercation passed in court about it. His lordship told his brother Atkins that "he should know here was no republic;" and the other answered, 'No, nor monarchy.' But the new officer was at last sworn."

A CHIEF JUSTICE AND HIS PUISNES.

A hundred years ago it was deemed a very unusual thing for a puisne judge to differ from the Chief Justice. And in Lord Mansfield's time it occurred only two or three times. During Lord Kenyon's time it happened

only about six times in fourteen years. Lord Kenyon treated a puisne judge's opinion usually with great contempt. On one occasion he laid down that certain circumstances in a case before the court amounted to legal fraud. But the three puisne judges all differed, and held there was no fraud. When they finished, the old chief exclaimed in a huff, "Good God! what injustice have I hitherto been doing!"

A PUISNE JUDGE PRAISING HIS CHIEF.

Justice Buller was appointed a judge at the early age of thirty-two, having been made a King's Counsel after five years' standing at the bar. He was a special favourite of Lord Mansfield, who wished Buller to be his successor. The judge pronounced this eulogium on his patron soon after the latter retired:—

"Within these thirty years the commercial law of this country has taken a very different turn from what it did before. Lord Hardwicke himself was proceeding with great caution, not establishing any general principle, but decreeing on all the circumstances put together. Before that period we find that in courts of law all the evidence in mercantile cases was thrown together: they were left generally to a jury, and they produced no general principle. From that time we all know the great study has been to find some certain general principle which shall be known to all mankind, not only to rule the particular case then under consideration, but to serve as a guide for the future. Most of us have heard these principles stated, reasoned upon, enlarged, and explained, till we have been lost in admiration at the strength and stretch of the human understanding. And I should be very sorry to find myself under a necessity of differing from any case upon this subject which has been decided by Lord Mansfield, who may be truly said to be the founder of the commercial law of this country."

JUDGES SPEAKING OUT OF COURT ABOUT CASES.

Lord Camden said, "Lord Mansfield has a way of saying, 'It is a rule with me—an inviolable rule, never to

hear a syllable said out of court about any cause that either is, or is in the smallest degree likely to come before me as judge.' Now I, for my part," said Lord Camden, "could hear as many people as choose to talk to me about their cases, it would never make any the slightest impression on me."

The practice of Lord Mansfield has been since regarded as more sensible than that of Lord Camden in this matter.

JUDGE MIMICKING JUDGE.

Lord Loughborough was felicitous in mimicking the self-laudatory style of Erskine. "The egotism of that pleader," says Miss Burney, "is proverbial, and so happily was his manner hit, rather than caricatured, by the Chancellor Loughborough, that the audience deemed his inventive faculty a mere exercise of memory. Giving an account of a supposed public meeting, Erskine, he said, opened to this effect: 'As to me, gentlemen, I trust I have some right to give my opinion freely. Would you know whence my title is derived? I challenge any man among you to inquire! If he ask my birth,—its genealogy may dispute with kings! If my wealth,—it is all for which I have time to hold out my hand! If my talents,—No! of these, gentlemen, I leave you to judge for yourself!'"

In Scotland, Lord Cullen while at the bar was so perfect a mimic that he could personate all the leading counsel and every judge on the bench, and hit off the peculiarities of each so that everybody roared with laughter at the performance.

A JUDGE RISING BY HIS GRAVITY.

Shiel told Moore of a good thing said by Keller, an Irish barrister. Keller meeting some judge, an old friend of his, a steady solemn fellow who had succeeded as much in his profession as Keller had failed, said to him: "In opposition to all the laws of natural philosophy you have *risen* by your *gravity*, while I have *sunk* by my *levity*!" —Moore's Mem.

COUNSEL INSISTING ON BEING HEARD BY A JUDGE.

Lord Manners, Lord Chancellor of Ireland, stopped several of the many counsel in a Chancery suit by saying he had made up his mind. He, in fact, lost his temper as each in succession rose, and he declined them in turn. At last O'Connell, one of the unheard counsel, began in his deepest and most emphatic tone: "Well then, my lord, since your lordship refuses to hear my learned friend, you will be pleased to hear ME;" and then he plunged into the case, without waiting for any expression, assent or dissent, or allowing any interruption. On he went, discussing and distinguishing and commenting and quoting, till he secured the attention, and evidently was making an impression on the unwilling judge. Every five minutes O'Connell would say: "Now, my lord, my learned young friend beside me, had your lordship heard him, would have informed your lordship, in a more impressive and lucid manner than I can hope to do, etc., etc., until he finished a masterly address. The Lord Chancellor next morning gave judgment in favour of O'Connell's client.—2 O'Flanagan's Irish Chanc., 366.

PERFECT JUDGES.

Jekyll used to say of Baron Graham's matchless goodtemper and politeness, that "no one but his sempstress could *ruffle* him."

Lord Brougham composed the following inscription for the monument of Justice Holroyd in Wargrave Church, erected in 1831:—

"Sacred to the memory of Sir George Sowley Holroyd, Knight, one of the justices of the Court of King's Bench. A lawyer to be ranked among the greatest of any age. Endowed with an original genius to enlarge the bounds of any science, but peculiarly adapted to that which he pursued: a counsellor sure, faithful, and sagacious: an advocate learned, patient, humane: of a gentle nature, serene temper, ready, skillful, correct: a judge upright, firm: of simple and kindly manners, but of principles pure,

lofty, inflexible. He was not more honoured in his public capacity than beloved in all the private relations of life."

PRAISING A DEAD JUDGE.

Baron Hullock died on circuit, and a brother Baron mentioned the loss thus sustained by the profession when he addressed a grand jury next day, saying of his deceased brother judge, "He circumscribed the ocean of the law with firm and undeviating steps."

EPITAPHS ON LAWYERS.

Pope also wrote an epitaph on a lawyer, Mr. Nathaniel Pigott, a Roman Catholic friend whom he often visited, and whose coachman once upset the poet in crossing a ford of the Thames. The poet altered his epitaph thrice, and it stood thus in the third edition: "To the memory of Nathaniel Pigott, barrister-at-law, possessed of the highest character by his learning, judgment, experience, integrity. Deprived of the highest stations only by his conscience and religion. Many he assisted in the law, more he preserved from it. A friend to peace, a guardian of the poor, a lover of his country. He died July 5, 1737, aged 76 years."

In the two former editions the poet inserted after the words "barrister-at-law" these words: "who gave more honor to his profession than he derived from it." Also, besides "guardian of the poor," he was at first said to be also "guardian of property, and a servant of God."

In a lengthy epitaph on Judge Denison, who died in 1765, it was said, "He showed by his practice that a thorough knowledge of legal art and form is not litigious, or an instrument of chicane, but the plainest, easiest and shortest way to the end of strife."

A GENEROUS JUDGE.

An action on an attorney's bill was tried before the Chief Justice Sir James Mansfield, and on a reference of several bills of costs being pressed, the plaintiff, an

attorney, refused to refer the case to arbitration unless his charge of 3s. 4d. for a letter was previously agreed to be allowed, but which the defendant pertinaciously refused. Upon this the judge facetiously declared that rather than the cause should not be referred he would himself pay the 3s. 4d. and which he instantly did. The parties then, being ashamed of their ill-judged pertinacity, immediately referred the cause generally to the arbitrator.

AN OVER-POLITE JUDGE.

At the Old Bailey it was customary to sentence the whole of the prisoners found guilty at the sessions at one time. It fell to Baron Graham's lot to perform this duty, and he accordingly went over the list with due solemnity, but omitted one person brought up for sentence—Mr. John Jones. The judge was on the point of finishing the sentences when the officer reminded his lordship of this omission. Whereupon the judge said gravely, "Oh! I am sure I beg John Jones's pardon," and then sentenced him to *transportation for life!*

A JUDGE INCAUTIOUSLY DRAWING ATTENTION TO HIS SHOES.

Lord Kenyon, who was penurious, and used to have his shoes very frequently soled and patched, was trying a cause, and sitting on the Bench so that his shoes and their good qualities were visible to all in court. An action for breach of contract to deliver shoes which were soundly made was tried before him, and much turned on the quality of the shoes supplied. The judge, by way of clinching the witness, suddenly asked, "Were the shoes anything like these?" pointing to his own. The witness at once replied, "No, my lord, they were a good deal better, and more genteeler." (Great laughter, in which the judge joined.)

HIS ROYAL HIGHNESS COMPLIMENTING A JUDGE.

When Lord Bute was entertaining the Duke of Gloucester at Cardiff Castle, he invited Mr. Nolan, the Chief Justice of the Brecon Circuit, to dinner; and on

this being mentioned to the Duke, the latter asked Lord Bute to give him some information about the judge, so that he might know what to say to him. Lord Bute said he knew nothing about Chief Justice Nolan, except that he was the author of a book on "the Poor Laws." Accordingly, when the judge was presented to His Royal Highness, the latter affably said, "Oh, my lord, although I have never made your acquaintance, I know you well by your valuable book on the poor—and a very *charming book* it is!"

JUDGES TALKING TOO MUCH ON THE BENCH.

Bacon, during his quarrels with Coke, thus lectured the latter in a letter to him, when he had been suspended as Chief Justice of England:—

"First, therefore, behold your errors. In discourse you delight to speak too much, not to hear other men; this some say becomes a pleader, not a judge. While you speak in your own element, the law, no man ordinarily equals you; but when you wander, as you often delight to do, you wander indeed, and give never such satisfaction as the curious time requires.

"Secondly, you clog your auditory when you would be observed. Speech must be either sweet or short.

"Thirdly, you converse with books, not men, and books especially human; and have no excellent choice with men, who are the best books; for a man of action and employment you seldom converse with, and then but with your underlings; not freely, but as a school-master with his scholars, ever to teach, never to learn. But if sometimes you would in your familiar discourse hear others, and make election of such as know what they speak, you should know many of these tales you tell to be but ordinary, and many other things which you delight to repeat and serve out for novelties to be but stale. As in your pleadings you were wont to insult over misery, and to inveigh bitterly at the persons, which bred you many enemies, whose poison yet smelleth, so are you still wont to be a little careless on this point, to praise and disgrace upon slight grounds, and that sometimes untruly; so that your reproofs and commendations

are for the most part neglected and contemned; where the censure of a Judge, coming slow but sure, should be a brand to the guilty and a crown to the virtuous. You will jest at any man in public, without respect of the person's dignity or your own; this disgraceth your gravity more than it can advance the opinion of your wit; and so do all actions which we see you do directly with a touch of vain glory, having no respect to the true end. You make the law to lean too much to your opinion, whereby you show yourself to be a legal tyrant, striking with that weapon where you please, since you are able to turn the edge any way. Your too much love of the world is too much seen, where, having the living of a thousand, you relieve few or none. The hand that hath taken so much, can it give so little? Herein you show no bowels of compassion, as if you thought all too little for yourself. You cannot but have much of your estate (pardon my plainness) ill got. Think how much of that you never spake for, how much by speaking unjustly or in unjust causes."—Bacon's Life.

JUDGE TOO LOQUACIOUS.

Lord Jeffrey, when appointed a Judge of the Scotch Court of Session, was distinguished for his loquacity, and it was difficult to say whether the judge or the counsel argued the case. On one occasion an eminent counsel had a judgment of Lord Jeffrey's to advise upon as to its soundness, and whether there was a good ground of appeal. The judgment began in the usual form, "The Lord Ordinary having heard counsel," etc. The opinion of counsel was to this effect: "The judgment is quite right, except that it should have commenced, 'Counsel having heard the Lord Ordinary,' etc., etc."

A JUDGE A PHYSIOGNOMIST.

"Lord Brougham told us stories of Justice Allan Park, which are extraordinarily ridiculous. He is a physiognomist, and is captured by pleasant looks. In a certain cause in which a boy brought an action for defamation against his schoolmaster, Campbell, his counsel, asked the

solicitor if the boy was good-looking. 'Very.' 'Oh, then, have him in court; we shall have a verdict.' And so he did. The judge's eyes are always wandering about, watching and noticing everything and everybody. One day there was a dog in court making a disturbance, on which he said, 'Take that dog away.' The officers went to remove another dog, when the judge interposed: 'No, not that dog. I have had my eye on that dog the whole day, and I will say that a better-behaved dog I never saw in a court of justice.'"—Greville's Mem.

JUDGE ALLOWING COUNSEL TO TALK NONSENSE.

Lord Chancellor Macclesfield was, during that part of his career when he was a common law judge, never suspected of any sort of corruption, and the only charge brought against him was of having been sometimes rather discourteous to the bar. This, according to Lord Campbell, "is not enough to lower him in our estimation." Lord Campbell adds: "Although I can conceive no more striking proof of a mean spirit than for a barrister when put upon the bench, really to behave with insolence or ill-temper to his former competitors at the bar, it is rather difficult for a judge altogether to escape the imputation of discourtesy if he properly values the public time; for one of his duties is to render it disagreeable to counsel to talk nonsense!"—4 Camp. Chanc., 512.

Chief Justice Parsons, the American judge, was considered very strong and somewhat overbearing on the bench towards counsel. One day he stopped Dexter, the eminent advocate, in the middle of his address to the jury on the ground that he was urging a point unsupported by any evidence. Dexter hastily observed, "Your Honour did not argue your own cases in the way you require us to do." "Certainly not," retorted the judge; "but that was the judge's fault, not mine."

THE DUTY OF JUDGES TO KEEP DOWN COUNSEL.

Roger North says of his brother, Lord Chief Justice North, "He was careful to keep down repetition, to

which the counsel, one after another, are very propense; and in speaking to the jury one and the same matter over and over again, the waste of time would be so great that, if the judge gave way to it, there would scarce be an end, for most of the talk was not so much for the causes, as for their own sakes, to get credit in the country for notable talkers. And his lordship often told them that their confused harangues disturbed the order of his thoughts, and after the trial was over it was very hard for him to resume his method, and direct the jury to comprise all the material parts of the evidence. Therefore he was positive not to permit more than one counsel of a side to speech it to the jury by way of summing up the evidence; and he permitted that in such a way as made them *weary* of it. Thus the abuse by fastidious talk wore away."

The same biographer adds in another passage of a like kind: "There were some occasions of his justice, whereupon he thought it necessary to reprehend sharply. As when counsel pretended solemnly to impose nonsense upon him, and when he had dealt plainly with them, and yet they persisted, this was what he could not bear; and if he used them ill, it was what became him, and what they deserved. And then his words made deep scratches; but still with salvo to his own dignity, which he never exposed by impotent chiding."

A JUDGE MISTAKING A STANDARD AUTHOR FOR A LIBELLER.

Erskine was defending a client against a prosecution for seditious libel, and in course of his speech quoted some extracts from a book. He was hastily interrupted by Justice Buller, the presiding judge, who said it was no defence of one libel to quote another and a worse libel in support of it. Erskine immediately turned to the jury, and said: "You hear, gentlemen, the observation of his lordship, and from that observation I maintain that you must acquit my client. His lordship says that the work under prosecution is not so libellous as the quota-

tion I have just read. Now, gentlemen, that quotation is from a work universally allowed to be classical authority on the character of the British Government. It is from the pen of the immortal Locke. Shall we condemn a writer who is declared not to go the length of that great and good man? "

JUDGE FAVOURING COUNSEL.

Chief Justice Parsons, the American judge, was domineering towards counsel. It is said that an old lawyer who practised before him, falling ill, handed over his cases to a young lawyer, Mr. Elijah Mills, advising the latter to engage senior counsel, and also giving him a letter of introduction to the Chief Justice. The judge being asked by Mr. Mills as to the merits of the different seniors, with a view to retain one, said: "I think, upon the whole, that you had better not employ any one. You and I can do the business about as well as any of them." This hint being acted on, Mr. Mills turned out to be very successful, and at the close of the sittings called on the judge to pay his respects. A senior lawyer then leaving the judge, on recognising the new caller, and suspecting the bond of union between him and the judge, delivered this Parthian shaft on retiring: "I'm not sure, Judge, of attending court at all next term. I think of sending my office boy with my papers. You and he together will do the business full as well as I can."

A JUDGE'S LIBRARY.

Lord Campbell said that a modern deceased Lord Chancellor was said to have collected a very complete law library by borrowing books from the bar which he forgot to return.—1 Camp. Chanc., 226.

LORD CHANCELLOR'S RUDENESS TO COUNSEL.

Lord Chancellor Jeffreys' occasional rudeness to counsel appears incredible. Mr. Whallop, a gentleman of eminence at the bar, who defended the famous Richard Baxter, arguing against the opinion expressed by the Court upon

the construction of a writing, Jeffreys said, "Mr. Whallop, I observe you are in all these dirty causes; and were it not for you gentlemen of the long robe, who should have more wit and honesty than to support and hold up these factious knaves by the chin, we should not be at the pass we are at." *Mr. Whallop.* "My lord, I humbly conceive that——" *Jeffreys.* "You humbly conceive! and I humbly conceive! Swear him! swear him!"

Mr. Bradbury, a junior counsel, having ventured to make an observation which was received with courtesy, as it agreed with my lord's view of the case, was by this encouraged to follow his leader in supporting a new objection thought by his lordship not to be tenable. *Jeffreys.* "Lord, sir, you must be cackling, too. We told you your objection was very ingenious; that must not make you troublesome: you cannot lay an egg but you must be cackling over it."

JUDGE INTERRUPTING COUNSEL.

The Irish judge Fletcher once interrupted Tom Gold in an argument he was entering upon about the jury deciding the fact, etc., etc., when Gold, vexed at being stopped in his career, said, "My lord, Lord Mansfield was remarkable for the patience with which he heard the counsel that addressed him." "He never heard you, Mr, Gold," retorted the judge with a sarcastic brogue.

Judge Fletcher, who was surly in his manner, once said to the counsel, "Sir, I'll not sit here to be baited like a bear tied to the stake." "No, my lord," retorted the counsel, "*not tied* to the stake!"

JUDGES OF EDWARD I. PUNISHED FOR BRIBERY.

The Chancellor of Edward I., Robert Burnel, as head of the law, exercised a vigilant superintendence over the administration of justice, and in the Parliament held at Westminster in the beginning of the year 1290, brought forward very serious charges against the judges for taking bribes and altering the records; upon which they were all convicted except two, whose names ought to be held

in honourable remembrance—John de Mattingham and Elias de Bekingham. Sir T. Wayland, Chief Justice of the Common Pleas, being found the greatest delinquent, had all his goods and estate confiscated to the King, and was banished for life out of the kingdom. Sir A. De Stratton, Chief Baron of the Exchequer, was fined 34,000 marks. Sir R. de Hengham, Chief Justice of the King's Bench, was let off with a fine of 7,000 marks, for although he had improperly altered a record, it was not supposed to have been from corrupt motives. The taint had spread into the Court of Chancery, and R. Lithebury, Master of the Rolls, was fined 1,000 marks. These sentences pronounced in Parliament by the Chancellor, had upon the whole a very salutary effect, but are supposed, for some ages, to have induced the judges to adhere too rigorously to forms and the letter of the law.—1 Camp. Chanc., 171.

JUDGE AND HIS ARBITRARY POWER.

A judge can scarcely help having a large discretion, and sometimes this quality has been severely criticized, as if it were a source of danger. "The discretion of a judge is said to be the law of tyrants: it is always unknown; it is different in different men; it is casual, and depends upon constitution, temper, and passion. In the best, it is oftentimes caprice; in the worst it is every vice, folly, and passion to which human nature is liable."—Per Lord Camden.

OLD JUDGE CALLED CHIEF JUSTICIAR.

There was in England, in ancient times, a Chief Justiciar, and likewise from very remote times a Grand Justiciar in Scotland, with very arbitrary power. In that country, when the judges going the circuit approach a royal burgh, the Lord Provost universally comes out to meet them, with the exception of Aberdeen, of which there is by tradition this explanation. Some centuries ago, the Lord Provost, at the head of the magistrates, going out to meet the Grand Justiciar at the Bridge of Dee, the Grand Justiciar, for some imaginary offence, hanged his lordship at the end of the bridge—since which

the Lord Provost of Aberdeen has never trusted himself in the presence of a judge beyond the walls of the city. Such was the account given to Lord Campbell by the Lord Justice-General.—1 Camp. Lives of Chanc., 5.

TITLE OF THE CHIEF JUSTICE OF ENGLAND.

There had been a keen controversy respecting Coke's right to call himself "Chief Justice of England." Lord Chancellor Ellesmere was quite wrong in supposing that this was a title only during the Barons' wars, as the office of Chief Justice of England, the highest both in the law and in the State, certainly subsisted from the Conquest till the reign of Edward I. From the time when that monarch remodelled the judicial system, the head of the King's Bench was generally called "Chief Justice to hold pleas before the King himself," and he became subordinate to the Chancellor.—2 Camp. Chanc., 247.

JUDGES AND THEIR PENSIONS.

Lord Loughborough was the first Lord Chancellor who had a retiring allowance by Act of Parliament. Each Lord before that time made a bargain with the Prime Minister, and often made a very hard one, stipulating for a present sum and sometimes for a retiring allowance also, or reversions of offices to sons.

The present arrangement of the retiring allowance of £5,000 a year was made by Lord Brougham.—2 and 3 W. 4, c. 122.

THE JUDGES AND LAW OFFICERS' SALARIES IN 1616.

"The following were the salaries of the law officers of the Crown in the year 1616:—

	£.	s.	d.
Attorney-General	81	6	8
Solicitor-General	70	0	0
King's Serjeant	41	6	10
King's Advocate	20	0	0

“The salaries of the Judges show that they must have depended a good deal on fees :

Sir E. Coke, Lord Chief Justice of			
England	.	.	.
Circuits	.	.	.
		224	19 9
		33	6 8
		<u>258</u>	<u>6 5</u>

Puisne Judges of King's Bench and			
Common Pleas	.	.	.
Besides circuits	.	.	.
		188	6 8
		33	6 8
		<u>221</u>	<u>13 4</u>

Chief Justice of Common Pleas	.	194	19 9
Chief Baron	.	188	6 0
Puisne Barons	.	133	6 8
Judge on Norfolk Circuit	.	12	6 8

“The usual amount of honoraries to counsel in this reign I have not been able to ascertain. From an entry in the parish books of St. Margaret's, Westminster, it appears that in the reign of Edward IV. they paid ‘Roger Fylpott, learned in the law, for his counsel, 3s. 8d., with 4d. for his dinner.’ ”—2 Camp. Lives of Chanc., 343.

JUDGES' OPINIONS OBTAINED BY THE CHANCELLOR.

As a grand *coup d'état*, Lord Chancellor Jeffreys undertook to obtain a solemn decision of the judges in favour of the dispensing power; and for this purpose a fictitious action was brought against Sir Edward Heales, the Lieutenant of the Tower, an avowed Roman Catholic, in the name of his coachman, for holding an office in the army without having taken the Oath of Supremacy, or received the sacrament according to the rites of the Church of England, or signed the declaration against transubstantiation. Jeffreys had put the great seal to letters patent, authorizing him to hold the office without these tests, “*nonobstante*” the Act of Parliament. This dispensation was pleaded in bar of the action, and upon a demurrer to the plea, after a sham argument by counsel, all the judges except one (Baron Street) held the plea to

be sufficient, and pronounced judgment for the defendant. It was now proclaimed at court that the law was not any longer an obstacle to any scheme that might be thought advisable.—3 Camp. Chanc., 554.

TWO JUDGES OF ONE COURT BROTHERS.

In the reign of Edward III., two brothers, of the name of Stratford, successively held the office of Lord Chancellor; and in recent times the two brothers Scott rose in the law to equal eminence. The two Crewes afford another instance of similar success. They were at the same school, the same college, and the same inn of court; always equally remarkable for steady application, sound judgment, and honourable conduct. They both followed exactly the same course till they were Serjeants-at-law, were knighted, and were successively Speakers of the House of Commons,—when fate varied their destiny.

In Lord Chancellor Cowper's diary there is a curious document, which to lawyers will be found very interesting. He suggested some changes in the judicial staff, and made these remarks:

"Judges of King's Bench.

Lord Chief Justice Parker.
Sir Littleton Powis.
Mr. Justice Eyre.
Sir Thomas Powis

"This court has ye great influence on Corporations. The 2 Brothers generally act, in those matters, in opposition to ye Ch. Justice and Mr J. Eyres: therefore it would be of great use if one of their places was supplyd by another fit man.

"Sir Littleton, ye elder Bro; is a man of less abilitys and consequence, but blameless. Sr Tho. of better ability, but more culpable; having been Attorney General to ye late K. James to his abdication, and zealously instrumental in most of ye steps w^{ch} ruined that Prince and brought those great dangers on the Kingdom. Besides hauing frō that time practisd the Law wth great

profit, He lately, when ye Hopes of ye Pretender's party were raisd, laid down his practise of near £4000 an: to be a Judge, not worth £1500 an: for no visible Reason, but if ye Pretender had succeeded, he would haue made, and that very justly, a merit of this step. If either of these be remov'd, I humbly recommend Serjeant Prat, whō the Ch. Justice, Mr. J. Eyres, and I belieue euery one that knows him will approue."—L. C. Cowper's Diary.

In Ireland there were two sons of an apothecary at the bar, named Johnson, and both became judges—one in the Common Pleas who was afterwards mixed up with Cobbett as libelling Lord Redesdale and Lord Hardwicke, the Irish Chancellor and Lord Lieutenant.

A LEADING COUNSEL WITH TWO CHIEF BARONS, HIS SONS, ON THE BENCH.

Sir Edward Atkins, son of an eminent lawyer of the same name, was made a Baron of Exchequer in 1660, and died in 1669. One of his sons, Sir Robert Atkins, was made a Justice of the Common Pleas in 1672. He resigned in 1679, and in 1689 was made Chief Baron of Exchequer by William III. A younger brother of the latter, namely, Sir Edward Atkins, had been also appointed Chief Baron, and was succeeded in that office by his elder brother, Sir Robert. Sir Robert published some valuable law tracts on constitutional law; and his son, Sir Robert Atkins, published a valuable History of Gloucestershire, which became scarce and costly owing to a large part of the edition being burnt by fire at the printer's office. There is a monument in Westminster Abbey to these three great lawyers.

It was also observed that the Lord Advocate of Scotland, Sir Thomas Hope, early in the seventeenth century, had two sons who were both Judges of the Court of Session, and one of the points of etiquette raised in his case was whether he should take off his hat to them; and the arbiters of the time thought he ought to be excused, in the circumstances, from doing so.

A JUDGE'S FATHER COMPARED WITH THE SON.

Justice Willes, the son of Chief Justice Willes, had an offensive habit of interrupting counsel. On one occasion an old practitioner was irritated by this practice to retort sharply, and ended by saying that "Your lordship doubtless shows greater acuteness even than your father, the Chief Justice, for he used to understand me *after I had done*, but your lordship understands me even *before I have begun*."

EXPLAINING "ALSO" AND "LIKEWISE"

Mr. John Clerk, an eminent Scotch advocate, was arguing before Lord Meadowbank (the second), who was the son of Lord Meadowbank (the first), the father being a more powerful judge. The learned counsel was pressing on the Court his construction of some words in a conveyance, and contrasting the use of the word "also" with the use of the word "likewise." The judge said, "Surely, Mr. Clerk, you cannot seriously argue that 'also' means anything different from 'likewise'! They mean precisely the same thing; and it matters not which of them is preferred." "Not at all, my lord; there is all the difference in the world between these two words. Let us take an instance: your worthy father was Lord Meadowbank; your lordship is 'also' Lord Meadowbank; but you are not '*like wise*' Lord Meadowbank!"

A JUDGE WHISTLING IN COURT.

Lord Alvanley (Mr. Pepper Arden) was sitting at Nisi Prius, and there came on a horse cause. It was long and tedious, and the evidence was very conflicting. The Chief Justice got up and walked backwards and forwards on the bench behind the desks. A witness came who gave the direct lie to one of the opposite witnesses. Lord Alvanley stopped, looked at the witness, and walked silently on. At last the witness went beyond all bounds; the judge, forgetting himself, involuntarily gave a loud whistle;—the court was electrified!

THE KITTEN AND THE JUDGE'S WIG.

It was the practice for the old Scotch judges to robe themselves in their own houses, and walk in full costume to the court, which in those days was quite near their houses or flats; and when dressed the judge often looked out of his window to see what o'clock it was before starting. One day Lord Coalston was looking out, when suddenly his wig rose off his head, and ascended without any visible cause to heaven without him, and his astonishment was prodigious. It turned out that two girls on the upper floor of the house had been playing with a kitten, and letting it down with a string, when just at the moment that the judge popped his head out, the kitten, in its desperation to gain a footing, clutched what it came in contact with, held it in a death-gripe, and ascended in triumph, to the intense astonishment of the reverend owner below, who could not see the moving cause and the giggling and terrified girls above. The three parties concerned, especially the kitten, were never more horrified in their lives, at this unwitting *catastrophe*!

A CHANCELLOR GIVING AWAY A JUDGESHIP.

Sir Thomas Davenport, a great Nisi Prius leader, had been intimate with Lord Chancellor Thurlow, and long flattered himself with the hopes of succeeding to some valuable appointment in the law, but several good things passing by, he lost his patience and temper along with them. At last he addressed this laconic application to his patron: "The Chief Justiceship of Chester is vacant; am I to have it?" and received the following laconic answer: "No! by G—d! Kenyon shall have it."

A JUDGE NEVER GIVING HIS REASONS.

Lord Mansfield, when a friend of his own was appointed Governor of a West India island, and complained that he would have also to sit as a judge and decide cases, which he dreaded, advised him to decide according to his notions of common sense, but never to give his reasons;

for, said he, "your judgment will probably be right, but your reasons will certainly be wrong." Many years afterwards, Lord Mansfield, while sitting on Privy Council appeals, had a judgment of this Governor brought before the Court, which seemed so absurd in its reasons that there was a serious clamour for a recall of the Governor, as incompetent. It was found, however, that the decision itself was perfectly right. It appeared that at first the Governor acted on Lord Mansfield's advice by deciding without giving reasons; and finding that he acquired great reputation by these decisions, began to think himself a great lawyer, and then gave his reasons at length, which had the result above mentioned.—2 Camp. C.J.s, 573.

A JUDGE APPOINTED TO THE COLONIES.

- Sir George Rose had a friend who had been appointed to a judgeship in one of the colonies, and who long afterwards was describing the agonies he endured in the sea passage when he first went out. Sir George listened with great commiseration to the recital of these woes, and said, "It's a great mercy you did not throw up your appointment!"

Coleridge, the poet, on a voyage to Margate, being with a schoolmaster and friend of his own, and much distressed at seeing this friend so earnestly engaged leaning over the side of the vessel, said to him, "Why, Robinson, I didn't expect this of you; I thought you brought up nothing but young gentlemen!"

APPOINTMENT OF JUDGES BY BALLOT.

In 1593 the Senators of the College of Justice in Edinburgh resolved that, in order to stop the importunate solicitations of courtiers, no judge was to be admitted unless three names were first submitted, and the college was then to select one; and this they were to do by ballot.

A SCOTCH APPRENTICE JUDGE.

In Scotland, when a judge is appointed, he is made to try his hand for a day in deciding some cause after

hearing the arguments, so as to show that he is fit for the office. He is called during this day Lord Probationer. His opinion is sometimes overruled, as was the case when Lord Jeffrey, in 1834, decided his first case. In former times a Mr. Patrick Haldane was nominated by George I., but after trial the Court rejected him as unfit. This led to a statute being passed under which the present mock system exists, which resembles the election by *congé d'élire* of a bishop, the judges having no longer a power to reject the nominee of the Crown.

THE JUDGE WITH THE DYING SPEECH.

A vacancy occurred among the judges of the Court of Exchequer, and the Ministers could not agree among themselves whom to appoint. The matter was discussed in Council, and George II. was present. The dispute grew very warm, when His Majesty at last put an end to the difficulty by calling out in his broken English, "I will have none of dese; give me de man *with de dying speech*;" by which he meant Adams, who was then Recorder of London, and whose business it was to make a report to His Majesty of the convicts under sentence of death.

CHANGING THE RECORDER OF LONDON.

Serjeant Glyn, the champion of Junius, and of Fox's Libel Bill, and of Wilkes, was a considerable favourite in the city of London, which stood staunchly by him. The citizens were occasionally interested in the election of their Recorder; and the Aldermen, in whose hands the appointment rests, would not wilfully elect an unpopular advocate for their judge. In the noisy period, when Wilkes's patriotism was in full triumph, upon the promotion of Baron Eyre, who had presided for nine years amongst them, the City cast their eyes upon Glyn. He was the City Counsel, often the chief step to the higher offices. Eyre, the Recorder, who held this post, gave great dissatisfaction, so that, after a warm discussion, he was dispensed with before he became a judge by a vote of 106 to 58, and John Glyn, Esq., Serjeant-at-law,

was the lawyer to be "advised with, retained, and employed."

The election for Recorder took place on the 17th of November, 1772. Every Alderman was present. The Serjeant had thirteen votes; Bearcroft, the famous King's Counsel, and afterwards Chief Justice of Chester, twelve; and Heyde, senior City Counsel, one.—2 Woolrych's Serjts., 591.

HOW A JUDGE GOT A FINE ESTATE.

Aubrey tells this story of Chief Justice Popham: "Sir Richard Dayrell, of Littlecot, in the county of Wilts, having got his lady's waiting-woman with child, when her travail came, sent a servant with a horse for a midwife, whom he was to bring hoodwinked. She was brought, and layd the woman; but as soon as the child was borne, she saw the Knight take the child and murther it, and burn it in the fire in the chamber. She having done her businesse, was extraordinarily rewarded for her paines, and went blindfold away. This horrid action did much run in her mind, and she had a desire to discover it, but knew not where it was. She considered with herself the time she was riding, and how many miles she might have rode at that rate in that time, and that it must be some great person's house, for the roome was twelve foot high, and she should knowe the chamber if she sawe it. She went to a Justice of peace, and search was made. The very chamber found. The Knight was brought to his tryall; and, to be short, this Judge had his noble house, parke, and manor, and (I thinke) more, for a bribe to save his life. Sir John Popham gave sentence according to lawe, but being a great person and a favourite, he procured a *nolle prosequi*."

REDUCING A CHIEF JUSTICE TO A PUISNE JUDGE.

Queen Elizabeth, who was above all things anxious to have the judgment-seat properly filled, the very day after her accession to the throne renewed Justice Dyer's commission as a Puisne Justice, bringing him back to the Common Pleas; and shortly afterwards she made him

Chief Justice of that court, in the room of Sir Anthony Brown, whom, from being Chief Justice, she degraded to be a Puisne, and who was contented to serve under a Chief allowed by himself, as well as the rest of the world, to be greatly his superior.—1 Camp. C.J.s, 184.

LORD HALE'S DEXTEROUS DEALING WITH BRIBES.

A gentleman in the west of England, who had a deer park, was in the habit of sending a buck as a present to the Judges of Assize, and did the same when Lord Chief Baron Hale came the circuit, although a cause in which he was plaintiff was coming on for trial. The cause being called, the following extraordinary dialogue took place in open court:—

Lord C. Baron. "Is this plaintiff the gentleman of the same name who has sent me venison?" *Judge's servant.* "Yes, please you, my lord." *Lord C. B.* "Stop a bit, then. Do not yet swear the jury. I cannot allow the trial to go on till I have paid him for his buck." *Plaintiff.* "I would have your lordship to know that neither myself nor my forefathers have ever sold venison, and I have done nothing to your lordship which we have not done to every judge that has come this circuit for centuries bygone." *Magistrate of the county.* "My lord, I can confirm what the gentleman says for truth, for twenty years back." *Other Magistrates.* "And we, my lord, know the same." *Lord C. B.* "That is nothing to me. The Holy Scriptures say, 'A gift perverteth the ways of judgment;' I will not suffer the trial to go on till the venison is paid for. Let my butler count down the full value thereof." *Plaintiff.* "I will not disgrace myself and my ancestors by becoming a venison butcher. From the needless dread of selling justice, your lordship delays it. I withdraw my record."—1 Camp. C.J.s, 553.

On another like occasion Lord Hale on circuit said to the usher, "Is Sir John Croke gone? Gentlemen, I must not forget to acquaint you, for I thought that Sir John Croke had been here still, that this Sir John Croke sent me this morning two sugar-loaves for a present. I did not then know, so well as now, what he meant by them;

but to save his credit, I sent his sugar-loaves back again." *Clerk of Assize*. "Yes, my lord, they were sent back again." *Lord C. Baron*. "I cannot think that Sir John believes that the King's Justices come into the country to take bribes. I rather think that some other person, having a design to put a trick upon him, sent them in his name. Gentlemen, do you know this hand?" (showing to the gentlemen of the grand jury the letter which accompanied the sugar). *Foreman*. "I fear me it is Sir John's, for I have often seen him write, doing justice business along with him; and your lordship may see that it is the same with this *mittimus* written and signed by him." *Lord C. B.* (putting the letter back into his bosom), "I intend to carry it with me to London, and I will relate the foulness of the business, as I find occasions."—1 Camp. C.J.s, 555.

A JUDGE ARRESTED ON THE BENCH FOR TREASON.

In 1640 Sir Robert Berkeley, one of the judges of the King's Bench who gave his opinion for ship-money, was impeached by the House of Commons of high treason in the Lord's House; and by their command Maxwell, the usher of the Black Rod, came to the King's Bench when the judges were sitting, took Judge Berkeley from off the bench, and carried him away to prison, which struck a great terror on the rest of his brethren, then sitting in Westminster Hall, and on all his profession. This judge was a very learned man in our laws, and a good orator, and judge moderate in his ways, except his desires of the Court favour. He redeemed himself afterwards by supplying the Parliament's occasions with £10,000, and ended his days in a private retirement, yet not without considerable gains by his chamber practice, and left a plentiful fortune to his family.

THE JUDGES INCORRUPTIBLE.

At the assizes in Cardiganshire, in 1832, the defendant in an action sent a statement of his case, with a ten-pound note enclosed, addressed to Mr. Justice Alderson, at his lodgings. When the learned judge next day took

his seat on the bench, he mentioned what he had received the evening before, and declared his intention of placing the letter in the hands of the Attorney-General for the purpose of a prosecution against the offender. It was, however, intimated to him that the offence had been the result rather of ignorance than of crime, and the judge, having returned the money, and censured the defendant, agreed to allow the matter to drop.—2 Law and Lawyers, 128.

A VITUPERATIVE CHIEF JUSTICE.

The violence of Lord Ellenborough's language, in defending in the House of Lords the practice of *ex officio* informations, called forth considerable animadversion from several noble lords. Lord Stanhope declared that he was afraid of entering into any controversy with the "vituperative Chief Justice"—justifying himself by the example of a peer celebrated for his politeness, of whom he told this anecdote. Lord Chesterfield, when walking in the street, being pushed off the flags by an impudent fellow, who said to him, "I never give the wall to a scoundrel!" the great master of courtesy immediately took off his hat, and making him a low bow, replied, "Sir, I always do."

A JUDGE WHO MADE SLIPS IN LATIN QUOTATIONS.

Lord Kenyon had a great weakness for quoting scraps of Latin, and misapplying them, thinking, like many half-educated people, that these are almost as brilliant as native wit. Coleridge in his "Table Talk," says the judge told a jury in reference to a blasphemy case: "Above all, need I name to you the Emperor Julian, who was so celebrated for every Christian virtue that he was called '*Julian the Apostle*.'"

On another occasion he concluded his address to the grand jury thus: "Having thus discharged your consciences, gentlemen, you may retire to your homes in peace, with the delightful consciousness of having performed your duties well, and may lay your heads on your pillows, saying to yourselves—*Aut Cæsar aut nullus.*"

A JUDGE TREATED AS A CIPHER.

Lord Kenyon, although he had been told that Horne Tooke, when sued for Mr. Fox's costs arising out of an election petition inquiry, was to attend as his own counsel and to make a "terrible splash," said in a sharp, contemptuous tone, "Is there any defence?"

Horne Tooke (taking a pinch of snuff, and looking round the court for a minute or two), "There are three efficient parties engaged in this trial—you, gentlemen of the jury, Mr. Fox and myself, and I make no doubt that we shall bring it to a satisfactory conclusion. As for the judge and the crier, they are here to preserve order; we pay them handsomely for their attendance, and, in their proper sphere, they are of some use; but they are hired as assistants only; they are not, and never were, intended to be the controllers of our conduct. Gentlemen, I tell you there is a defence, and a very good defence to this action, and it will be your duty to give effect to it," etc., etc.

A JUDGE CALLED A LEGAL MONK.

Lord Kenyon carried on a furious war against the destructive vice of gaming, which he declared to be mischievously prevalent in both sexes. He recommended that fashionable gaming establishments should be indicted as common nuisances, adding this threat, which is said to have caused deep dismay: "If any such prosecutions are fairly brought before me, and the guilty parties are convicted, whatever may be their rank or station in the country, though they may be the first ladies in the land, they shall certainly exhibit themselves in the pillory."

This ungallant attack upon the fair sex roused a chivalrous defence from the Earl of Carlisle, who described the sad consequences arising from the tribunals of justice being occupied by "legal monks, utterly ignorant of human nature and of the ways of men, who were governed by their own paltry prejudices, and

thought they must be virtuous in proportion as they were coarse and ill-mannered." Lord Kenyon cared nothing for any of these invectives, except the imputation of being a "legal monk." This stuck to him very fast, and he frequently complained of it. When making any observation to the jury which he thought very knowing as well as emphatic, he would say:—

"But, gentlemen, you will consider how far this is entitled to any weight, coming from a *legal monk*; for a great discovery has been made, that the judges of the land, who are constantly conversant with business, who see much more of actual life on their circuits, and in Westminster Hall, than if they were shut up in gaming houses and brothels, are only legal monks."

On another occasion he said: "Somebody tells us that the judges are legal monks—that they know nothing of the world. *What is the world?* It is necessary to define terms, in order to know what the world is, and what is meant by this knowledge of the world. If it is to be got by lounging, like young men of fashion, about Bond Street, or at gaming-tables, or at Newmarket, or in private houses of great men, or in brothels, I disavow being acquainted with it. But surely something of what may be called a knowledge of the world *quicquid agunt homines*, may be contained in courts of justice." It is said that he went on addressing grand juries on the circuit in this strain, till Lord Carlisle threatened to bring him before the House of Lords for a breach of privilege.—3 Camp. C.J.s, 69.

JUDGES LIKING THEIR WORK.

It is said that Lord Mansfield was as much pleased with trying causes at Nisi Prius as others are with sporting or angling. When Mons. Cottu, the French advocate, went the Northern Circuit, and witnessed the ease and delight with which Mr. Justice Bayley got through his work, he exclaimed, "Il s'amuse à juger." Judge Buller used to say, somewhat irreverently, that his "idea of Heaven was to sit at Nisi Prius all day, and play at whist all night."

CHIEF JUSTICE PREPARING TO BE A PEER.

Chief Justice Sir Dudley Ryder was appointed in 1754, but Lord Chancellor Hardwicke being supposed to be jealous of any lawyer but himself being made a peer, no peerage was conferred or offered. After two years' delay, it being found expedient for party purposes to have a new peer, Sir Dudley was offered the honour, and had fixed on the title of Lord Ryder. On the 24th of May, 1756, the King signed the usual warrant to the Attorney-General to make out the patent of peerage, and it was agreed that the new peer should go to St. James's and kiss hands on the elevation. That evening, however, he was suddenly struck with a mortal malady and died in a few hours. The eldest son was then within a month of his majority, and so could not vote immediately; and the incident, and any claim arising thereon, were soon forgotten; but at last, twenty years later, Mr. Ryder was raised to the peerage by the title of Lord Harrowby.

QUOTING OPINIONS OF JUDGES WHEN AT THE BAR.

Lord Mansfield's fame was said to be shaken by what took place on the famous conveyancing case of *Perrin v. Blake*. When that case was decided in the King's Bench, the Chief Justice and the Court held, that on the construction of the will John Blake took only an estate for life. Fearne, the conveyancer, published a letter producing a copy of an opinion of Lord Mansfield when at the bar that Blake had an estate tail. Justice Buller afterwards, as well as Lord Mansfield himself, denied he had ever given any such opinion, and said he had copies of his opinions, and they were to the contrary. Fearne rejoined that the great conveyancer Bond used to tell his pupils that he had seen the original case for opinion, and Mr. Murray's opinion which he entered in his books, to the effect, that Blake had an estate tail. Fearne said it was impossible Bond could have been mistaken in such a matter. It was thought by many people of that time (1756) that the conveyancer triumphed, and that Lord

Mansfield's copies of opinions were fictitious. Lord Campbell thought that possibly, in the hurry of business, Mr. Murray had given opinions both ways, and forgot all about it. The decision of the King's Bench was reversed by the Exchequer Chamber, but it long afterwards remained with many a moot question which of the two constructions of that will was correct. An appeal was brought to the House of Lords, where it was thought Lord Mansfield's opinion would be re-established. But the parties fearing the result, compromised the matter.—2 Camp. C.J.s, 434.

A CHIEF JUSTICE ON POPULARITY HUNTING.

During the unparalleled excitement caused by Wilkes's outlawry in 1768, Lord Mansfield, on pronouncing the judgment of the King's Bench reversing the outlawry, discoursed on the terrors held out against judges, and the attempts at intimidating them. He said: "I honour the king and respect the people, but many things acquired by the favour of either are in my account objects not worth ambition. I wish popularity; but it is that popularity which follows not that which is run after; it is that popularity which sooner or later never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong upon this occasion to gain the huzzas of thousands, or the daily praise of all the papers which come from the press. I will not avoid doing what I think is right though it should draw on me the whole artillery of libels—all that falsehood and malice can invent, or the credulity of a deluded populace can swallow."

JUDGES CHARGING A SHILLING FOR AN AFFIDAVIT.

Lord Clonmel, an Irish judge who never thought of demanding more than a shilling for an affidavit, used to be well satisfied, provided it was a good coin. In his time the Birmingham shillings were current, and he used the following precaution to avoid being imposed on by taking a bad one: "You shall true answer make to such questions as shall be demanded of you touching this

affidavit, so help you God. Is this a good shilling? Are the contents of this affidavit true? Is this your name and handwriting?"

CASHIERING JUDGES.

There had been a reluctance to exercise the prerogative of cashiering judges which had been dormant during the long reign of Elizabeth, and the abuse of which had caused such scandal in the reigns of James I. and Charles I. But these scruples being once overcome were wholly disregarded. From the time of Lord Chief Justice Raynsford being superseded in order to make room for Chief Justice Scroggs, the system recommenced of clearing the bench for political reasons, and it was continued till the vilest wretch the profession of the law could furnish, being Chief Justice of England, Sir R. Wright, the last Chief Justice of James II., became in some degree independent.

In consequence of the intrigues of puisne judges desirous of becoming Chiefs in the reign of Charles II. and James II., the rule was laid down at the Revolution, that a puisne judge is only to attend one levee on his appointment, and is never again to appear at Court.—2 Camp. C.J.s, 8.

AN ANCIENT JUDGE CASHIERED FOR NOT RESPECTING A SPARROW.

Phocius, in his *Bibliothèque*, dwells with great satisfaction on a decision of the Athenians as to the conduct of one of their judges sitting in the Areopagus. That court sat upon a hill in the open air, and one day a sparrow pursued by a hawk darted into the midst of them for refuge. It took shelter in the bosom of one of the judges who was of a harsh and passionate temper, and taking hold of the little trembler threw it off with such violence as to kill it on the spot. The whole assembly were filled with indignation at this cruelty. The judge was instantly arraigned for it, and by the unanimous suffrage of his colleagues he was degraded and ejected from his seat on the bench.

A LADY JUDGE OF ASSIZE TRYING RIOTERS.

During the reign of Henry VIII., when family quarrels among the Berkeleys raged, and a riotous company of Maurice Berkeley's servants entered the park of Lady Anne Berkeley at Yate, and killed the deer and fired the hayricks, she repaired to court and made complaint. The King at once issued a special commission under the great seal, authorizing her and others to inquire into and determine the riots, and made her one of the quorum. She returned to Gloucester, opened the commission, sat on the bench, impanelled a jury, and heard the charge, and on a verdict of guilty pronounced sentence accordingly.

CHAPTER III.

ABOUT THE LAW: ITS AUTHORS, REFORMS, AND COURTS.

THE LAW IS OPEN.

Horne Tooke, in answer to the common saying, handed down by the town clerk of Ephesus, that "The courts of law are open to all," made this retort: "So is the London Tavern."

THINGS WHICH ARE CALLED LAW.

Moore, in 1844, says: "In Lord Denman's late memorable speech on the Irish State Trials, the following sentence amused me not a little. 'There was a great deal,' he said, 'of law taken for granted, which when it came to be examined was found to be no law at all.' Alas! the same is, I fear, the case with philosophy, and many other grave and grand things of this world."—Moore's Diary.

THE DEFINITION OF LAW.

Many definitions have been attempted of the law. One of the latest is as follows: "Law is the sum of the varied restrictions on the actions of each individual, which the supreme power of the State enforces, in order that all its members may follow their occupations with greater security." This definition, instead of representing the body of law as consisting of a course of conduct, confines the attention to the more limited purpose of controlling some only of the actions of men, either directly by restraining these, or indirectly by defining forms for giving

greater effect to them, and that not entirely by way of positive command, but mainly by way of negative prohibition. It also points to the general purpose kept in view by the supreme legislative power. It does not indeed necessarily imply, that that purpose is secured by the right means. It merely states the object which is always professed, or is that which alone can be legitimately professed. The object may not be in fact attained, or it may be attained or sought to be attained by the wrong means. The means, however, which are used, and the subject-matter as to which restrictions are imposed, cannot be exactly stated or even indicated, for the simple reason that no human sagacity or acuteness has yet defined how far these restrictions may or ought to go in the further development of modern civilization. It is the main business of politics to discuss and find a solution for each particular exigency. It is enough that the law proposes well, and does its best for the time being to decide what will most effectively secure the general good.—I Paterson's Lib. of Subject, 29.

THE GLORIOUS UNCERTAINTY OF THE LAW.

A learned correspondent of "Notes and Queries," 5th Series, vol. x., p. 106, says that soon after Lord Mansfield, in 1756, had overruled several long-established decisions, and introduced innovations into the practice of the Court, Mr. Wilbraham, at a dinner of the judges and counsel in Serjeants' Inn Hall, gave the toast, "The glorious uncertainty of the law." In 1802, when the Prince Regent relinquished his claim to the revenues of the Duchy of Cornwall, Sheridan explained in Parliament that H. R. H. had been induced to do so by "the glorious uncertainty of the law."

IF THAT IS LAW, WHO IS SAFE ?

Chief Justice Kelyng, as to treason, thus laid down the law to a jury: "By levying war is not only meant when a body is gathered together as an army, but if a company of people will go about any public reformation, this is high treason. These people do pretend their design was

against brothels; now for men to go about to pull down brothels, with a captain and an ensign, and weapons—if this thing be endured, who is safe?"

GOOD LAWS AND DIFFICULTY OF ENFORCING THEM.

Bolingbroke said: "It is a very easy thing to devise good laws; the difficulty is to make them effective. The great mistake is that of looking upon men as virtuous, or thinking that they can be made so by laws; and consequently the greatest art of a politician is to render vices serviceable to the cause of virtue."—Spence's Anecd.

PEDANTRIES OF LAW.

An eminent counsel used to say that he had read a story of a man who was tried for stealing a cow, but was acquitted, it not being set forth in the indictment whether the field from whence he stole her was an oblong or a square.—Gent. Mag., 1731.

LAWS LIKE COBWEBS.

Anacharsis, the intelligent foreigner of his day, on visiting Athens, and hearing of the laws of Draco and Solon, said: "All the laws you can make are but spiders' webs, which the strong will break through, and only the poor fly will be caught."

LAW LANGUAGE.

There was an interval of repose for domestic improvement in 1362, when the Chancellor De Edington carried through Parliament the famous statute whereby it was enacted that all pleadings and judgments in the Courts of Westminster should for the future be in English, whereas they had been in French ever since the Conquest;—and that all schoolmasters should teach their scholars to construe in English, and not in French, as they had hitherto been accustomed. Although the French language no longer enjoyed any legal sanction, it had such a hold of legal practitioners, that it continued to be voluntarily

used by them down to the middle of the eighteenth century. Their reports, and treatises, and abridgments are in French; and if we would find anything in Chief Baron Comyn's Digest, composed in the reign of George II., about "Highways," or "Tithes," or "Husband and Wife," we must look to the titles "Chemin," "Dismes," and "Baron and Feme."

The law, having spoken French in her infancy, had great difficulty in changing her dialect. It is curious that Acts of Parliament long continued to be framed in French, and that French is still employed by the different branches of the legislature in their intercourse with each other. Not only is the royal assent given to bills by the words "*La Reigne le voet*," but when either House passes a bill there is an endorsement written upon it, "*Soit bailé aux Seigneurs*," or "*aux Communes*;" and at the beginning of every Parliament the Lords make an entry in their journals in French, of the appointment of the receivers and triers of petitions, not only for England, but for Gascony.—I Camp. Lives of Chanc., 256.

STATUTES NOT AT FIRST IN ENGLISH.

Coke says in the preface to his Third Report: "It was not thought convenient to publish those or any of the statutes enacted in those days in the vulgar tongue, lest the unlearned by bare reading without right understanding might suck out errors, and trusting to their own conceit might endanger themselves, and sometimes fall into destruction."

LEGAL RECORDS TO BE IN ENGLISH.

Ordinances were passed, by the enlightened Law Reformers under the Commonwealth, "for having all legal records in the language of the country," so that a knowledge of the laws might be communicated to those who were to obey them. This proposition for conducting all law proceedings in English was most strenuously opposed, and seemed to many a more dangerous innovation than the abolition of the House of Lords or the regal office. Whitelock, in introducing it, was obliged to

fortify himself with the example of Moses, and a host of other legislators, who had expounded their laws in the vernacular tongue. The reporters, who delighted in the Norman French, were particularly obstreperous. "I have made these reports speak English," says Stiles in his preface, "not that I believe they will be thereby more generally useful, for I have been always and yet am of opinion, that that part of the common law which is in English hath only occasioned the making of unquiet spirits contentiously knowing, and more apt to offend others than to defend themselves; but I have done it in obedience to authority, and to stop the mouths of such of this English age who, though they be confessedly different in their minds and judgments, as the builders of Babel were in their language, yet do think it vain, if not impious, to speak or understand more than their own mother tongue." So Bulstrode, in the preface to the second part of his Reports, says that "he had many years since perfected the work in French, in which language he had desired it might have seen the light, being most proper for it, and most convenient for the professors of the law." But the Restoration brought back Norman French to the reports, and barbarous Latin to the law records, which continued till the reign of George II. —3 Camp. Lives of Chanc., 90.

LAW PROCEEDINGS IN ENGLISH AT FIRST OPPOSED.

Lord Raymond in 1731 (then Chief Justice) opposed in the House of Lords the bill which proposed to enact that all legal proceedings should be conducted in the English language. He thought barbarous Latin in indictments much better, though quite unintelligible to the party accused. He ridiculed the bill, and thought he stamped it with folly by saying this: "Upon this principle, in an action to be tried at Pembroke or Caernarvon, the declaration and plea ought to be in Welsh." The Duke of Argyll courteously answered, "he was glad to perceive that the noble and learned lord, perhaps as wise and learned as any that ever sat in that House, had nothing better to bring forward against the bill but a joke."

Lord Campbell says: "I have heard judges in my own time lament the change then introduced on the ground that, although it might be material for the parties both in civil and criminal proceedings to have some notion of what is going on, the use of the Law Latin prevented the attorneys' clerks being so illiterate as they have since become. I may likewise mention the ruling of a Welsh judge about thirty years ago on a trial for murder, that the indictment and the evidence must not be interpreted into Welsh for the information of the prisoner, as that would be contrary to the statute of George II., which requires all proceedings to be carried on in the English language."—2 Camp. C.J.s, 210.

JARGON OF THE LAWYERS.

In the *Spectator*, No. 551, a writer says: "Affairs of consequence having brought me to town, I had the curiosity the other day to visit Westminster Hall, and having placed myself in one of the courts, expected to be most agreeably entertained. After the court and counsel were with due ceremony seated, up stands a learned gentleman, and began: 'When this matter was last *stirred* before your lordships;' the next humbly moved to *quash* an indictment; another complained that his adversary had *snapped* a judgment; the next informed the Court that his client was *stripped* of his possessions; another begged leave to acquaint their lordships that they had been *saddled with costs*. At last up got a grave serjeant, and told us his client had been *hung up* a whole term by a writ of error. At this I could stand it no longer, but came hither and resolved to apply myself to your Honour to interpose with these gentlemen, that they would leave off such low and unnatural expressions; for surely, though the lawyers subscribe to hideous French and false Latin, yet they should let their clients have a little decent and proper English for their money."

THE PRESUMPTION THAT EACH KNOWS THE LAW.

If it were once allowed in answer to any complaint of violation of the law to set up the defence of ignorance,

then there must be gradations of ignorance and gradations of default, and a preliminary inquiry in each case as to whether such ignorance was real or assumed, culpable or innocent. One would be entitled to urge that he had never received any education at all; another, that he was about to study the law, but had not yet advanced sufficiently; a third, that he had made an effort to learn, but could find no sufficient teachers; a fourth, that he had to get his living, or had no sufficient means, and so had no leisure; a fifth, that he had applied to the wisest person within his reach, and had been misled by the information he received; and a sixth, that he had made careful inquiry, and found the highest authorities equally wise and weighty on both sides, and was unable to decide which should be his guide. It might be asked, if such inquiries were permitted, what materials exist to enable any court satisfactorily to dispose of them. The interior of a man's mind is beyond the reach of inquiry. To endeavor to discover the secret springs of thought—the degree of reflection given to any one subject—the elements of self-education, or the impulse given to the mind by the common knowledge provided by the schools—with what possible certainty can any third party attempt to solve so inscrutable a problem? Hence the courts wisely abandon the impossible task, and treat all alike as incompetent to set up any such defence, leaving each to find out for himself, and in his own way, whatever he wants, and to take the risk of his want of knowledge as it may turn out.

This theory, however, was departed from in a case where a man, in a ship on the coast of Africa, did an act, on June 27, for which he could not have been punished except under an Act of Parliament which had passed on the previous May 10, but the knowledge of which statute could not have reached him at that remote place. The judges concurred that it would be unjust to punish him, though technically he was guilty, and recommended a pardon to be obtained. An exception to the rule, that ignorance of the law is no excuse, exists in the case of a judge, who, mistaking the law, inflicts injustice on another.—1 Paterson's Lib. Subject, 155.

SUMPTUARY LAWS.

Sumptuary laws, that is to say, laws which profess to regulate minutely what people shall eat and drink, what guests they shall entertain, what clothes they shall wear, what armour they shall possess, what limit is to be put to their property, what expenses they should incur in their funerals, were considered by the early and middle ages as absolutely necessary for the proper government of mankind. The legislatures of all ages, until the last two centuries, took for granted, that they could not choose but lay down rules of this minute personal and harassing description. Of all such delusive notions as to the proper business of government, Montaigne aptly disposes in a sentence: "To enact that none but princes shall eat turbot, shall wear velvet or gold lace, merely sets every man more agog to eat and wear them."

Some sumptuary laws went extravagant lengths, but each probably had some evil of the time in view. Tiberius issued an edict against people kissing each other when they met, and against tavern-keepers selling pastry. Lycurgus even prohibited finely decorated ceilings and doors.—*Paterson's Lib. Subj.*, 424.

OUR FOOD ONCE LIMITED BY STATUTE.

Our own legislatures had for centuries very decided opinions as to the food that ought to be allowed. An ordinance of Edward III., in 1336, prohibited any man having more than two courses at any meal. Each mess was to have only two sorts of victuals, and it was prescribed how far one could mix sauce with his pottage, except on certain feast days, when three courses at most were allowable. The Statute of Diet of 1363 enjoined that servants of lords should have once a day flesh or fish, and remnants of milk, butter, and cheese; and above all, ploughmen were to eat moderately. And the proclamations of Edward IV. and Henry VIII. used to restrain excess in eating and drinking. All previous statutes as to abstaining from meat and fasting were repealed in the time of Edward VI.; but by new enactments, and in order that fishermen may live, all persons were bound

under a penalty not to eat flesh on Fridays or Saturdays, or in Lent, the old and the sick excepted. The penalty in Queen Elizabeth's time was no less than three pounds, or three months' imprisonment; but it was at the same time added, that, whoever preached or taught that eating of fish was of necessity for the saving of the soul of man, or was the service of God, was to be punished as a spreader of false news. And care was taken to announce, that the eating of fish was enforced, not out of superstition, but solely out of respect to the increase of fishermen and mariners. The exemption of the sick from these penalties was abolished by James I.; and justices were authorized to enter victualling houses and search for and forfeit the meat found there. All these preposterous enactments have been swept away in the reign of Victoria.—*I Paterson's Lib. Subject, 435.*

OUR DRESS ONCE REGULATED BY STATUTE.

The Statute of Diet and Apparel in 1363, and later statutes, minutely fixed the proper dress for all classes, according to their estate, and the price they were to pay: handicraftsmen were not to wear clothes valued above forty shillings, and their families not to wear silk, fur, or silk velvet; and so with gentlemen and esquires, merchants, knights, and clergy, according to gradations. Ploughmen were to wear a blanket and a linen girdle. No female belonging to the family of a servant in husbandry was to wear a girdle garnished with silver. Every person beneath a lord was to wear a jacket reaching his knees, and none but a lord was to wear pikes to his shoes exceeding two inches. Nobody but a member of the royal family was to wear cloth of gold or purple silk, and none under a knight to wear velvet, damask, or satin, or foreign wool, or fur of sable. It is true, notwithstanding all these restrictions, that a license of the king enabled the licensee to wear anything. For one whose income was under twenty pounds to wear silk in his nightcap was to incur three months' imprisonment, or a fine of ten pounds a day. And all above the age of six, except ladies and gentlemen, were bound to wear on the Sabbath day a cap of knitted wool.

These statutes of apparel were not repealed till the reign of James I.—1 Paterson's Lib. Subject, 437.

THE POOR MAN'S NOTION OF THE GAME LAWS.

Syney Smith says: "It is impossible to make an uneducated man understand in what manner a bird hatched, nobody knows where—to-day living in my field, to-morrow in yours—should be as strictly property as the goose, whose whole history can be traced in the most authentic and satisfactory manner from the egg to the spit. The arguments on which this depends are so contrary to the notions of the poor, so repugnant to their passions, and perhaps so much above their comprehensions, that they are totally unavailing. The same man who would respect an orchard, a garden, or a hen-roost, scarcely thinks he is committing any fault at all in invading the game covers of his richer neighbor; and as soon as he becomes wearied of honest industry his first resource is in plundering the rich magazine of hares, pheasants, and partridges—the top and bottom dishes, which on every side of his village are running and flying before his eyes. As these things cannot be done with safety in the day, they must be done in the night; and in this manner a lawless marauder is often formed who proceeds from one infringement of law and property to another, till he becomes a thoroughly bad and corrupted member of society."—Edin. Rev., 1819.

THE PRINCIPLE OF THE POOR LAW.

That some kind of provision must be made by the prosperous for the poor, in order to save the latter from perishing by starvation, is almost self-evident. The difficulty has been in discovering the least objectionable mode of achieving this result. The fulness of the earth must in some way be made to supply the bodily wants of all; and yet numerous other tendencies and instincts of human nature must be considered in the machinery. To allow even a starving man to help himself out of the first and readiest property which comes in his way would lead to constant war, bloodshed and irritation; and therefore a

circuitous mode of satisfying the needy and despoiling the rich must be invented, by which bounds may be set to the rage of hunger, and balm be poured into the wounds of those whose property, which is their life-blood, is taken for this laudable end.

It has been said that all poor laws are grossly unjust, because they tax the industrious to feed the idle and profligate. But it has been aptly answered, that, if there were no such tax, it would merely shift what ought to be the common burden of all to the shoulders of the few who are always considerate and humane.—2 Paterson's Lib. Subject, 5.

THE POOR LAWS—HOW FAR EFFICIENT.

By the now existing machinery, which, however cumbrous, acts with certainty, and can be brought to bear on each individual case as it arises, it can seldom happen, except by some criminal delinquency or scarcely less criminal apathy of the officials, that any one individual member of the community, however obscure, can be left to die of starvation, whatever be his misfortunes or whatever his demerits—except indeed it be, that some false shame on the part of the necessitous, or some accident for which none can be blamable, prevents their case being known and so brought within the reach of the machinery provided. And the whole is a result which reflects the highest glory on the legislature of any country—that it has provided a means which enables every human being to be supplied with at least sufficient support for life, though it is to be given in such a way as neither to injure the recipient nor those who are the involuntary donors. The cumbrous and far-fetched method of doing this may admit of many improvements in detail; but it must always appear a monument of human wisdom, for which we are indebted, not to the Greeks or the Romans, nor even to our common law, but to that fortunate system of government which allows the hardships and wants of every class to reach the ears of those who are not too far removed in sympathy and self-interest, and who are both able and willing to alleviate them.—2 Paterson's Lib. Subject, 119.

OUTLIVING THE LAW.

From the mouth of that dull black-letter lawyer, Serjeant Maynard, came two of the most felicitous sayings in the English language. Jeffreys having once rudely taunted him with having grown so old as to forget his law, "True, Sir George," replied he; "I have forgotten more law than you ever learned."

When the Prince of Orange first took up his quarters at Whitehall, on James's flight, different public bodies presented addresses to him, and Maynard came at the head of the men of the gown. The Prince took notice of his great age, and observed he must have outlived all the lawyers of his time. "If your Highness," answered he, "had not come over to our aid, I should have outlived the law itself."

We ought to value still more highly Serjeant Maynard's encomium on the great palladium of our freedom. "Trial by jury," said he, "is the subject's birthright and inheritance, as his lands are; and without which he is not sure to keep them or anything else. This way of trial is his fence and protection against all frauds and surprises, and against all storms of powers."

OLD LEGAL AUTHORS.

All writers who have touched upon our juridical history have highly extolled the legal improvements which distinguished the reign of Edward I., without giving the slightest credit for them to any one except the King himself; but if he is to be denominated the English Justinian, it should be made known who were the Tribonians who were employed by him; and the English nation owes a debt of gratitude to the Chancellors, who must have framed and revised the statutes which are the foundation of our judicial system,—who must, by explanation and argument, have obtained for them the sanction of Parliament,—and who must have watched over their construction and operation when they first passed into law.

Lord Campbell rejoiced in doing tardy justice to the

memory of Robert Burnel, decidedly the first in this class, and in attracting notice to his successors, who walked in his footsteps. He said that to them, too, we are probably indebted for the treatises entitled *Fleta* and *Britton*, which are said to have been written at the request of the King, and which, though inferior in style and arrangement to *Bracton*, are wonderful performances for such an age, and make the practitioners of the present day, who are bewildered in the midst of an immense legal library, envy the good fortune of their predecessors, who, in a few manuscript volumes, copied by their own hand, and constantly accompanying them, could speedily and clearly discover all that was known on every point that might arise.—1 Camp. Lives of Chanc., 189.

LEGAL AUTHORS AND LAW BOOKS.

Lord Campbell in 1846 observed that it must be admitted that juridical writing is a department of literature in which the English have been very defective, and in which they are greatly excelled by the French, the Germans, and even by the Scotch. The present state of the common law may now probably be best learned from the Notes of Patteson and Williams, or Serjeant Williams' Notes to Saunders's Reports of Cases decided in the reign of Charles II., and written in Norman-French.—1 Camp. Lives of Chanc., 160.

PROFESSIONAL JEALOUSY OF BLACKSTONE'S COMMENTARIES.

Charles Yorke told Dr. Warburton that if Blackstone's Commentaries had been published when he began the study of law, it would have saved him the reading of twelve hours in the day. This work, which proved of so much advantage to the law student, was on its appearance greeted with the sneers and whispered censures of many of our black-letter lawyers. It became the fashion among a certain class to decry it. A gentleman was told by one who prided himself on being of the old school, that there was scarcely one page in Blackstone in which there was not one false principle and two doubtful prin-

ciples stated as undoubted law. Horne Tooke, who was always ambitious of a legal reputation, declared that "it was a good gentleman's law book, clear but not deep." It was, in short, obnoxious to one charge, viz., that it was intelligible. Mr. Hargrave (see a specimen of that gentleman's eloquence under the head of "Conveyancers") is reported to have said, that "any lawyer who writes so clearly as to be intelligible was an enemy to his profession." This accounted for the unfavourable reception which Blackstone's Commentaries met with from some quarters.—2 Law and Lawyers, 58.

HARGRAVE AS A LEGAL AUTHOR.

Hargrave, the eminent commentator on Coke, died neglected. He was, to be sure, with all his learning, hardly producible in any judicial office; and latterly his mind was diseased, insomuch that when he was brought to Lincoln's Inn to vote as a Bencher in the choice of a Preacher, and his vote was objected to, Jekyl said that, "instead of being deprived of his vote, he ought to be allowed two votes, for he was *one beside himself*."

It was owing to an infirmity of Hargrave (one of the senior counsel in the Chelsea Hospital case), which caused him to leave the court two or three times in the middle of his argument, and which so protracted the hearing that it had to be adjourned till next morning, that Erskine, the next junior counsel, had an opportunity of preparing his first immortal speech next morning, and which was the making of his fortune.

WHY SOME JUDGES BECAME GREAT LAWYERS.

Lord Holt was said to have given his unwearied devotion to the law and to his business owing to the distaste he had for Lady Holt's scolding propensities. Judge Gilbert, who wrote so many excellent law books, shut himself up in his chambers in Serjeant's Inn for the same reason. The same characteristic was noticed in Lord Coke and Lord Chancellor Bacon, and to some extent in Lord Hale and Lord Mansfield.

REPORTERS OF LAW CASES.

Lord Chancellor Harcourt seems to have given mortal offence to Vernon, the reporter, who practised as a counsel regularly before him, but spitefully suppresses his best decisions, and gives doubtful ones. (See 2 Vernon, 664–668). Lord Campbell suspected that the reporter may have been a Whig, and copied the Tory blacksmith, who in shoeing the horse of a Whig always lamed him.

Lord Campbell says as to his own work as a reporter: “When I was a Nisi Prius reporter, I had a drawer marked ‘Bad Law,’ into which I threw all the cases which seemed improperly ruled. I was flattered to hear Sir James Mansfield, C.J., say: ‘Whoever reads Campbell’s Reports must be astonished to find how uniformly Lord Ellenborough’s decisions were right.’ My rejected cases, which I kept as a curiosity—not maliciously—were all burnt in the great fire in the Temple when I was Attorney-General.”—4 Camp. Chanc., 458.

A LAW REPORTER AS A PEDESTRIAN.

The author of Keble’s Reports, which are very poor productions, was not Serjeant Keble, as Lord Campbell assumed, but one Joseph Keble, who was one of the eccentricities of Hampstead. He had a small estate at Northend, where he lived during the vacation. He usually walked to Hampstead; and a Mr. Keble, a bookseller in Fleet Street, a relative, used to relate that Joseph generally performed the walk in the same number of steps, which were gravely counted by him.

TAKING NOTES OF A LEGAL ARGUMENT.

Sir George Rose, when at the bar, having the notebook of the regular reporter of Lord Eldon’s decisions put into his hand, with a request that he would take a note for him of any decision which should be given, entered in it the following lines as a full record of all that was material, which had occurred during the day:—

" Mr. Leach
 Made a speech,
 Angry, neat but wrong;
 Mr. Hart,
 On the other part,
 Was heavy, dull, and long;
 Mr. Parker
 Made the case darker,
 Which was dark enough without.
 Mr. Cooke
 Cited his book,
 And the Chancellor said—I doubt."

This *jeu d'esprit*, flying about Westminster Hall, reached the Chancellor, who was very much amused with it notwithstanding the allusion to his doubting propensity. Soon after, Mr. Rose having to argue before him a very untenable proposition, he gave his opinion very gravely, and with infinite grace and felicity thus concluded: "For these reasons the judgment must be against your clients; and here, Mr. Rose, the Chancellor does not doubt."

QUOTING THE BOOK OF NATURE.

A declamatory speaker (Randle Jackson, counsel for the East India Company), who despised all technicalities, and tried to storm the Court by the force of eloquence, on one occasion, when uttering these words, "In the book of nature, my lords, it is written——" was stopped by this question from the Chief Justice, Lord Ellenborough, "Will you have the goodness to mention the page, sir, if you please?"

ONE PERSON'S DOUBTS BETTER THAN OTHER PEOPLE'S CERTAINTIES.

Lord Chancellor Hardwicke said of a Scotch law book called "Dirleton's Doubts"—being a discussion of several moot points in that law: "Dirleton's doubts are better than most people's certainties."

LAW REFORM.

In classic antiquity lawgivers were honored not less than conquerors, and all the most celebrated laws of Rome bore the names of their authors; but in our own history (*horresco referens*) oblivion seems to await all those who devote themselves to legal reform. We do not know with any certainty who framed the Statutes of Westminster in the time of Edward I., the Statute of Fines, the Statute of Uses, the Statute of Wills, or the Statute of Frauds, although they ought to have been commemorated for conferring lasting benefit on their country. The Grenville Act for the trial of controverted elections was the first which conferred any *éclat* on the name of its author, and Fox's Libel Act is almost the only other down to our own times.—I Camp. Lives of Chanc., 41.

THE CODIFICATION OF ENGLISH LAW.

The confused and chaotic state of the laws of England has long been the ridicule of foreigners, the lamentation of our own intelligent legislators and citizens, a standing confession of weakness to many a government, which has constantly postponed to a more convenient season addressing itself to what Bacon said even in his time would be a heroic work—the making of a digest of the law. It is true that the apathy on this subject has never yet been traced to any poverty in the material, and it has been shared by the classes whom a code would most sensibly benefit, and who seem only dimly conscious of a loss from never having enjoyed the possession. A petty state, having little to boast of, may well keep its laws, or what are called laws, hidden in obscurity; but a great country loses half its dignity and strength when it cannot in an orderly and methodical way give some account to all whom it may concern of the main reasons why its own social progress and the contentment of its citizens have been so well assured.—I Paterson's Lib. Subject, 175.

PROJECT OF A LAW UNIVERSITY UNDER HENRY VIII.

Sir Nicholas Bacon, in 1537, presented to King Henry VIII. a splendid plan for the endowment from the spoils of the monasteries of a great seminary in London, after a model of a university, for the study of the law, and for the training of ambassadors and statesmen. It is much to be regretted that, owing to the rapacity of the courtiers, this effort was abortive, as down to our own time London remained the only metropolis in Europe (except Constantinople) without a university; and English lawyers, though very acute practitioners, have been noticed to be rather deficient in an enlarged knowledge of jurisprudence.

Besides the study of the common and civil law, the objects of the projected institution were to cultivate the knowledge of Latin and French, and in those languages to write and debate on all questions of public policy; to form historical collections, and publish new treatises relating to domestic institutions and foreign diplomacy; and the students were finally to perfect their knowledge of political science as *attachés*, travelling in the suites of King's ambassadors on the Continent.—2 Camp. Lives of Chanc., 89.

WOLSEY'S NOTION OF A LAW UNIVERSITY.

If Cardinal Wolsey was sneered at for his ignorance of the doctrines and practice of the Court when he was Lord Chancellor, he had his revenge by openly complaining that the lawyers who practised before him were grossly ignorant of the civil law and the principles of general jurisprudence; and he has been described as often interrupting their pleadings, and bitterly animadverting on their narrow notions and limited arguments. To remedy an evil which troubled the stream of justice at the fountain-head, he, with his usual magnificence of conception, projected an institution to be founded in London, for the systematic study of all branches of the law. He even furnished an architectural model for the building, which was considered a masterpiece, and remained long after his death as a curiosity in the palace at Greenwich. Such an institution is still a desideratum in England,

for, with splendid exceptions, it must be admitted that English barristers, though very clever practitioners, are not such able jurists as are to be found in other countries where law is systematically studied as a science.—*1 Camp. Lives of Chanc.*, 507.

WILLIAM THE CONQUEROR'S CENTRAL COURT OF LAW.

William the Conqueror's plan was to have a grand central tribunal for the whole realm, which should not only be a court of appeal, but in which all causes of importance should originate and be finally decided. This was afterwards called *Curia Regis*, and sometimes *Aula Regis*, because it assembled in the hall of the king's palace. The great officers of State—the Constable, the Mareschal, the Seneschal, the Chamberlain, and the Treasurer—were the judges, and over them presided the Grand Justiciar. Next to the King himself, he was chief in power and authority, and when the King was beyond seas (which frequently happened) he governed the realm like a viceroy. He was at all times the guardian of the public peace as Coroner-General, and he likewise had a control over the finances of the kingdom. In rank he had the precedence of all the nobility, and his power was greater than that of all other magistrates. The administration of justice continued nearly on the same footing for eight reigns, extending over rather more than two centuries. Although, during the whole of this period, the *Aula Regis* was preserved, yet, for convenience, causes, according to their different natures, were gradually assigned to different committees of it—to which may be traced the Court of King's Bench, the Court of Common Pleas, the Court of Exchequer, and the Court of Chancery.—*1 Camp. C.J.s*, 303.

COURTS OF LAW MADE STATIONARY.

There was introduced under Edward III. a great improvement in the administration of justice, by rendering the Court of Chancery stationary at Westminster. The ancient kings of England were constantly migrating—one principal reason for which was, that the same part of the country, even with the aid of purveyance and pre-

emption, could not long support the Court and all the royal retainers, and the render in kind due to the King could be best consumed on the spot. Therefore, if he kept Christmas at Westminster, he would keep Easter at Winchester, and Pentecost at Gloucester, visiting his many palaces and manors in rotation. The Aula Regis, and afterwards the Courts into which it was partitioned, were ambulatory 'along with him—to the great vexation of the suitors. This grievance was partly corrected by Magna Charta, which enacted that the Court of Common Pleas should be held in a "certain place," a corner of Westminster Hall being fixed upon for that purpose. In point of law, the Court of King's Bench and the Court of Chancery may still be held in any county of England, "wheresoever in England the King or the Chancellor may be." Down to the commencement of the reign of Edward III., the King's Bench and the Chancery actually had continued to follow the King's person, the Chancellor and his officers being entitled to part of the purveyance made for the royal household. By 28 Edward I., c. 5, the Lord Chancellor and the justices of the King's Bench were ordered to follow the King, so that he might have at all times near him sages of the law able to order all matters which should come to the Court. But the two Courts were now by the King's command fixed in the places where, unless on a few extraordinary occasions, they continued to be held down to our own times, at the upper end of Westminster Hall, the King's Bench on the left hand, and the Chancery on the right, both remaining open to the Hall, and a bar being erected to keep off the multitude from pressing on the judges. The Chancellor, on account of his superior dignity, had placed for him a great marble table, to which there was an ascent by five or six steps, with a marble chair by the side of it. The marble table and chair are said to have been displaced when the Court was covered in from the Hall.—1 Camp. Lives of Chanc., 218.

SHOPS IN WESTMINSTER HALL ABOLISHED.

"In 1630, one Saturday night, a woman having negligently left a pan of coals under one of the stalls or

shops in Westminster Hall which do pass along from the Common Pleas towards the Chancery, all those shops except three were burnt up. And the flame mounted so high on the west side of the Hall as not only some of the angels' wings were singed, but the fire took hold on the roof; and had not Mr. Squib, one of the tellers of the Exchequer, passed by chance through the Hall betimes on Sunday morning, and hired two sailors to climb up and to open the lead in three or four places and pour down water, that goodly Hall had been burned down. So now His Majesty Charles I. will suffer no more shops to stand there."—Life of Ch. I.

CHANGING THE SITES OF COURTS.

That Lord Keeper Bridgman, in the time of Charles II., was not a judge of very enlarged views, one may conjecture from his celebrated construction of the clause of Magna Charta providing for the due administration of justice. The Court of Common Pleas, in the reign of Charles II., was held in Westminster Hall, near the great northern gate; and the judges, counsel, attorneys, suitors, and bystanders being much annoyed by the cold and the noise, there was a general wish that the Court should be removed to an adjoining recess, from which the voice of the serjeants, when eloquent, might still have been heard in the hall; but the Chief Justice would by no means agree to this innovation. "For the Great Charter enacts that the Court of Common Pleas, instead of following the King in his progresses, shall be held *in aliquo certo loco*; so that after the proposed removal, all the proceedings of the Court would be a *coram non judice*, and void."—Roger North.

COMMONWEALTH HIGH COURT OF JUSTICE.

When the ordinance to constitute the High Court of Justice was first introduced into the House of Commons, Serjeant Bradshaw was named in it as an assistant only, but in a further stage of its progress he was promoted to the rank of Commissioner. He was chosen President of the Court to try Charles I. For the occasion he had a

thick crowned beaver hat, lined with plated steel, to ward off blows in the event of any public tumult.

A HIGH COURT OF JUSTICE.

The Lord Protector Cromwell was obliged, on the discovery of a royalist plot, to resort to a very arbitrary measure, by establishing a High Court of Justice, which was to decide on life or death without a jury, and without the control of any known law. The Lords Commissioners of the Great Seal were placed at the head of it, and Lord Lisle acted as President.

The name of the High Court of Justice was revived in the reign of Victoria, when some of the old courts were rearranged, and a new Palace of Justice (called the Royal Courts) was built at Temple Bar.

COURTS OF JUSTICE OPEN TO THE PUBLIC.

A court of justice is open to the public; and any person whatever, whether interested or not by reason of inhabitancy or otherwise, is entitled to enter, if there is room for him to be there. All the superior courts are therefore free to the visitation of any one who chooses to attend. This right has never been questioned. Nevertheless it is not an absolute right for any person to go and insist on choosing his own position, for the regulation of places must necessarily reside in the judge, otherwise his own seat might be taken possession of by the first comer. Thus it follows, that the presiding officer, whether he be judge, coroner, justice, or sheriff, has the control of the proceedings, and the power of admission or exclusion according to his own discretion. In all courts of justice there are occasions when matters are or ought to be conducted in privacy and to avoid scandal; and it rests with the judge of the court, exclusively and without appeal, to determine when such an occasion has arisen. The propriety of his decision cannot be questioned in any action; for this being a matter within his jurisdiction, and no judge being amenable to an action for anything done in the execution of his office, it follows that no one has a remedy by way of damages for any

mistake. And this is the rule applicable to all courts, great and small.—Paterson's Lib. Press, 125.

THE OLD MARSHAL'S COURT.

Hyde, afterwards Lord Chancellor Clarendon, when in the House of Commons, had the honour of striking the first blow in the House at a specific grievance. This was by a motion for papers respecting the Court of Honour, or Earl Marshal's Court, which, under pretence of guarding heraldic distinctions, had become a powerful organ of oppression. He mentioned several instances with great effect. A citizen was ruinously fined by this Court, because, in an altercation with an insolent waterman who wished to impose upon him, he deridingly called the swan on his badge "a goose." The case was brought within the jurisdiction of the Court by showing that the waterman was an Earl's servant, and that the swan was the Earl's crest. The citizen was so severely punished for "dishonouring" this crest. Again, a tailor who had often very submissively asked payment of his bill from a customer of *gentle blood*, whose pedigree was duly registered at the Herald's College, on a threat of personal violence for his importunity, was provoked into saying that "he was as good a man as his creditor." For this offence, which was alleged to be a levelling attack upon the aristocracy, he was summoned before the Earl Marshal's Court, and mercifully dismissed with a reprimand—on releasing the debt. While the House was thus amused and excited, Hyde successfully concluded his maiden speech by telling them that not only was the Court oppressive to the humbler classes, but that its exactions were onerous to the nobility themselves, and to the whole body of the gentry of England.

This obnoxious Marshal's Court had not relaxed in its mischievous activity since its recent exposure; and Hyde, who now "spoke smartly and ingenuously," said that for words of supposed defamation, of which the law took no notice, more damages had been given by the sole judgment of the Earl Marshal in two days, than by juries in all the actions tried in all the Courts in Westminster Hall during a whole term. He further proved that

this supposed Court was a mere usurpation during the present reign, the earliest precedent of its having entertained a suit of words being in the year 1633. The committee reported, "that the Constable's and Earl Marshal's Court has no jurisdiction to hold plea of words, that the Earl Marshal can make no Court without the Constable, and that the Earl Marshal's Court is a grievance." The report was adopted by the House; and so palpable was the usurpation which, unchecked, might have been confirmed by usage, that the Earl Marshal begged pardon for what he had done, throwing the blame upon his advisers, and, without any bill to abolish it, "the Court never presumed to sit afterwards."—3 Camp. Chanc., 121.

A JUDGE ARRESTED IN COURT.

Hyde was a member of the Committee for inquiring into the illegal conduct of the judges respecting ship money, and assisted Lord Falkland in preparing the charges against Lord Keeper Finch. He presented a report from the Committee, which so deeply implicated Mr. Justice Berkeley, that the learned judge, while sitting in the Court of King's Bench in his robes, was arrested, and brought away prisoner through Westminster Hall, then full of people. See this incident noticed also *ante*, p. 67.

THE STAR CHAMBER.

Lord Bacon and Lord Coke particularly praised the statute of 2 Henry VII. c. 1, contrived to extend the jurisdiction of the Star Chamber, which they called "a Court of Criminal Equity," and which, not being governed by any certain rules, they considered superior to any other Court to be found in this or in any other nation. It was certainly found a very useful instrument of arbitrary government during the whole continuance of the Tudor dynasty; but its authority being still stretched in opposition to a growing love of freedom, it mainly led to the unpopularity of the Stuarts and their expulsion from the throne.

Lord Campbell said he wished that there had been

preserved to us the debates on the abolition of the Star Chamber. He made no doubt that its advocates ascribed to it all the prosperity and greatness of the country, and prophesied from its abolition the speedy and permanent prevalence of fraud, anarchy, and bloodshed in England.

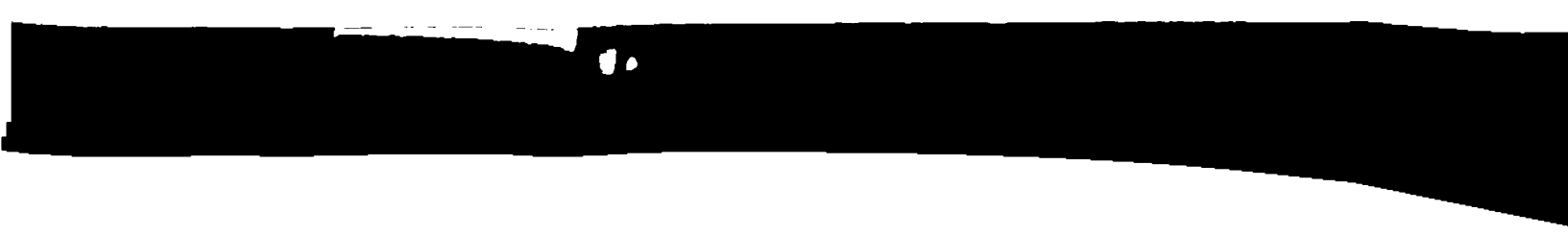
CONTEMPT OF COURT.

The power to commit summarily for contempt all persons who intrude into the judicial function, and profess to have better and superior means of knowledge, or who suggest partial or corrupt conduct, is deemed inherent in all courts of record, though the occasion and extent of this summary jurisdiction have given rise to nice distinctions. It is said to be a necessary incident to every court of justice, whether of record or not, to fine and imprison for a contempt acted in the face of it. This exercise of power is as ancient as any other part of the common law. If the course of justice is obstructed, that obstruction must be violently removed. When men's allegiance to the laws is fundamentally shaken, this is a dangerous obstruction.

Chief Justice Wilmot, who put this doctrine as high as it could be put, and examined the authorities, ended by saying that the object of courts having the power of punishing by attachment for contempt was "to keep a blaze of glory round the judges, and to deter people from attempting to render them contemptible in the eyes of the public."—Paterson's Lib. Press, 122.

CHIEF JUSTICE GASCOIGNE COMMITTING THE PRINCE OF WALES.

Sir Thomas Elyot, in his work "The Governor," relates this incident as to Chief Justice Gascoigne. "The moste renowned prince king Henry the fyfte, late kynge of Englande, durynge the lyfe of his father, was noted to be fiers and of wanton courage; it hapened that one of his servantes, whom he favoured well, was, for felony by him committed, arraigned at the kynges benche: whereof the prince being advertised and incensed by lyghte persons aboute him, in furious rage came hastily to the



barre where his servante stode as a prisoner, and commanded him to be ungyved and set at libertie; whereat all men were abashed, reserved the Chiefe Justice, who humbly exhorted the prince to be contented, that his servant mought be ordred accordynge to the aunciente lawes of this realme: or if he wolde have hym saved from the rigour of the lawes, that he shulde obteyne, if he moughte, of the kynge his father, his gracious pardon, whereby no lawe or justyce shulde be derogate. With which answer the prince nothyng appeased, but rather more inflamed, endeavored hymselfe to take away his servuant. The juge considering the perillous example and inconvenience that mought thereby ensue with a valyant spirite and courage, commanded the prince upon his alegeance, to leave the prisoner, and depart his way. With which commandment the prince being set all in a fury, all chafed and in a terrible maner, came up to the place of jugement, men thynking that he wold have slayne the juge or have done to hym some damage; but the juge sittynge styll without moving, declaring the majestie of the kynge's place of jugement, and with an assured and noble countenance, sayde to the prince these wordes followyng:

“ ‘Syr, remembre yourselfe, I keep here the place of the kyng your souveraine lorde and father, to whom ye owe double obedience; wherefore eftsoones in his name, I charge you desyste of your wylfulness and unlawfull enterprise, and from hensforth give good example to those, whyche hereafter shall be your propre subjectes. And now, for your contempte and disobedience, go you to the pryson of the kynge's benche, whereunto I comyte you, and remayne ye there prysoner untill the pleasure of the kynge your father be further knowen.’

“ With whiche wordes being abashed, and also wondrynge at the mervaylous gravitie of that worshypfulle justyce, the noble prince layinge his weapon aparte, doying reverence, departed, and went to the kynge's benche, as he was commanded. Whereat his servauntes disdayninge, came and shewed to the kynge all the hole affaire. Whereat he awghyles studyenge, after as a man ravysht with gladnes, holdynge his eien and handes up towarde heven, abraided, saying with a loude voice:

“ ‘ O mercifull God, howe moche am I, above all other men, bounde to your infinite goodness, specially for that ye have gyven me a juge, who feareth not to minister justyce, and also a sonne, who can suffre semblably, and obey justyce ! ’ ”

A JUDGE ROBBED ON THE BENCH.

The Chancellor Sir T. More did not despise a practical joke. While he held his City office as Recorder, he used regularly to attend the Old Bailey Sessions, where there was a tiresome old justice, “ who was wont to chide the poor men that had their purses cut for not keeping them more warily, saying that their negligence was the cause that there were so many cutpurses brought thither.” To stop his prosing, More at last went to a celebrated cutpurse then in prison, who was to be tried next day, and promised to stand his friend if he would cut this justice’s purse while he sat on the bench trying him. The thief being arraigned at the sitting of the Court next morning, said he could excuse himself sufficiently if he were but permitted to speak in private to one of the bench. He was bid to choose whom he would, and he chose that grave old justice, who then had his pouch at his girdle. The thief stepped up to him, and while he rounded him in the ear, cunningly cut up his purse, and, taking his leave, solemnly went back to his place. From the agreed signal, More, knowing that the deed was done, proposed a small subscription for a poor needy fellow who had been acquitted, beginning by himself setting a liberal example. The old justice, after some hesitation, expressed his willingness to give a trifle, but finding his purse cut away, expressed the greatest astonishment, as he said he was sure he had it when he took his seat in Court that morning. More replied, in a pleasant manner, “ What ! will you charge your brethren of the bench with felony ? ” The justice becoming angry and ashamed, Sir Thomas called the thief and desired him to deliver up the purse, counselling the worthy justice hereafter not to be so bitter a censorer of innocent men’s negligence, since he himself could not keep his purse safe when presiding as a judge at the trial of cutpurses.

Lord Campbell relates this story of Sir John Sylvester, Recorder of London. "He was in my time robbed of his watch by a thief whom he tried at the Old Bailey. During the trial he happened to say aloud that he had forgot to bring his watch with him. The thief being acquitted for want of evidence, went with the Recorder's love to Lady Sylvester, and requested that she would immediately send his watch to him by a constable he had ordered to fetch it."

"Soon after I was called to the Bar, and had published the first number of my 'Nisi Prius Reports,' while defending a prisoner in the Crown Court, I had occasion to consult my client, and I went to the dock, where I conversed with him for a minute or two. I got him off, and he was immediately discharged. But my joy was soon disturbed: putting my hand into my pocket to pay the 'junior' of the circuit my quota for yesterday's dinner, I found that my purse was gone, containing several bank-notes, the currency of that day. The incident causing much merriment, it was communicated to Lord Chief Baron Macdonald, the presiding judge, who said, 'What! does Mr. Campbell think that no one is entitled to take notes in court except himself?'"—*1 Camp. Lives of Chanc.*, 598.

LAWYER ROBBED ON HIS WAY TO COURT, AND A FRIENDLY STRATAGEM IN HIS FAVOUR.

The *London Post* of 1st June, 1700, reported this adventure. "Two days ago, Mr. Simon Harcourt (afterwards Lord Chancellor), a lawyer of the Temple, coming to town in his coach, was robbed by two highwaymen on Hounslow Heath of £50, his watch, and whatever they could find valuable about him; which being perceived by a countryman on horseback, he dogged them to a distance; and they taking notice thereof, turned and rid up towards him; upon which he, counterfeiting the drunkard, rid forward, making antic gestures; and being come up with them, spoke as if he clipped the King's English with having drunk too much, and asked them to drink a pot, offering to treat them, if they would but drink with him;

whereupon, they believing him to be really drunk, left him, and went forward again; and he still followed them till he came to Kew ferry, and when they were in the boat discovered them, so that they were both seized and committed; by which means the gentleman got again all they had taken from him."

APPLAUDING COUNSEL IN COURT.

Though Holt complained once of the audience hissing, our courts fortunately forbid this demonstrative sympathy. The advocates of ancient Rome, in its palmy days, resorted to tricks to secure an audience; and they hired and bought a rabble to follow them about and clap them; as Pliny the younger, himself a leading advocate, described the practice with contempt. He says the first person who introduced the practice was Licinius, though all he did at first was to invite people to come and hear him. Quintilian told Pliny that it happened in this way. One day Domitius Afer was pleading before the centumviri in his slow and impressive way, when on a sudden a shouting and clapping was heard in a neighboring court. He paused in astonishment, and resumed after a grave look of indignation. Again another shouting, and another pause. A third time it occurred, and the advocate asked what it was. He was then told it was Licinius addressing the next court. Domitius Afer thereon threw down his brief, exclaiming, "This, my lords, is intolerable; our profession is going to the dogs: I quit it forever." Pliny says that things got worse and worse, and noises were more like cymbals and drums, and the yelling and shouting became worse than what occurred in a theatre. He was disgusted, and loathed the whole business, and would have left it at once if it had not been that his friends thought he might as well make a little more money first.

THE JUDGES REFERRING THE CASE TO A MILLINER.

In Paris an action was brought to recover the price of a magnificent dress from Mrs. Graham, who had ordered a body to be made to correspond with a dress of embroidered black lace. This body was to correspond with the skirt,

and no other details were entered into. The milliner followed the pattern of the border, and not of the skirt, and the English lady refused to accept the dress. Her counsel produced the dress in court, and the judges being puzzled, referred the matter to a celebrated lady, a lace dealer, who returned her lucid opinion on stamped paper, and duly sealed, as follows: "If it be true in *principle* that the custom was to make the body correspond with the skirt, yet in fact *good sense* and *good taste* concur in *justifying* the proceedings of Madame Troyes, who, emancipating herself from *the trammels of routine*, had boldly dared to substitute for the happy accomplishment of her object the rich and tasteful design of the border instead of the mean and paltry one of the skirt!"

COURT POSTPONING JUDGMENT FOR A HUNDRED YEARS.

When Dolabella was proconsul in Asia, a woman of Smyrna was accused before him of poisoning her husband and son. She admitted the fact, but said that they had by plot killed another son of hers, who was a most excellent and blameless youth. Dolabella referred the case to his council, and they seemed to think it was not a fit case for punishment. The case was then referred to the Areopagites at Athens as the most skilful judges. That court was so perplexed that it adjourned the hearing to that day one hundred years thence.

Aristotle told a similar story of a woman who was violently in love with a youth who was not much in love with her, and she gave him a magical potion to restore his love; but he, unfortunately, died in the operation. When charged before the Areopagites with murder, they were satisfied she never meant to kill him; so they adjourned the further hearing *sine die*.

COURTS JUDGING FOR THEMSELVES AS TO AN ALLEGED INDECENCY.

The jealous Toledo clergy wished to put down the Bolero (a favourite Spanish dance), on the pretence of immorality. The dancers were allowed in their defence

to exhibit a specimen to the Court. When they began, the bench and the bar showed symptoms of restlessness, and at last, casting aside their gowns and briefs, they joined, as if under some uncontrollable impulse, in the amusement. Verdict for the defendants, with costs.

IMPOUNDING A DOCUMENT IN COURT.

In one case, Baron Hullock, when at the bar, was particularly instructed not to produce a certain deed unless it was absolutely necessary. Notwithstanding this, he produced it in order to decide the business at once. On examination it proved to have been forged by his client's attorney, who was seated behind him, and who had warmly remonstrated. Mr. Justice Bayley, who tried the cause, ordered the deed to be impounded, so that a prosecution might be instituted. Before this could be done, Mr. Hullock requested leave to inspect it, and on its being handed to him immediately returned it to his bag. The judge remonstrated, but in vain. Mr. Hullock said, "No power on earth should induce him to surrender it. He had incautiously put the life of a fellow creature in peril; and though he had acted to the best of his discretion, he should never be happy again, were a fatal result to ensue." Mr. Justice Bayley—not sorry, perhaps, for an excuse—continued to insist on the delivery of the deed, but declined taking decisive measures until he had consulted with the other judge. The consultation came too late, for the deed was destroyed without delay, and the attorney escaped.

A SERJEANT COMING LATE INTO COURT.

A learned serjeant kept the Court waiting one morning for a few minutes. The business of the Court commenced at nine. "Brother," said the judge, "you are behind your time this morning. The Court has been waiting for you." "I beg your lordship's pardon," replied the serjeant; "I am afraid I was longer than usual in dressing." "Oh," returned the judge, "I can dress in five minutes at any time." "Indeed!" said the learned brother, a little surprised for the moment; "but in that

my dog Shock beats your lordship hollow, for he has nothing to do but to shake his coat, and thinks himself fit for any company."

"BY ALL MEANS PROTEST AND GO."

Henry Hunt once took up the cause of a boy who was unjustly imprisoned. He addressed the judge: "I am here, my lord, on the part of the boy Dogood," proceeded the undaunted volunteer advocate. His lordship cast a moment's glance on the printed list, and quietly said, "Mr. Hunt, I see no name of any boy Dogood in the paper of causes," and turned towards the door of his room. "My lord," vociferated the orator, "am I to have no redress for an unfortunate youth? I thought your lordship was sitting for the redress of injuries in a court of justice." "O no, Mr. Hunt," still calmly responded the judge; "I am sitting at Nisi Prius; and I have no right to redress any injuries, except those which may be brought before the jury and me, in the causes appointed for trial."—"My lord," then said Mr. Hunt, somewhat subdued by the unexpected amenity of the judge, "I only desire to protest." "Oh, is that all?" said Lord Ellenborough; "by all means protest, and go about your business!" So Mr. Hunt protested, and went about his business; and my lord went unruffled to his dinner, and both parties were content.

ACCIDENT DURING TRIAL KILLING THE ATTORNEY.

When Justice Wilmot was trying a cause at Worcester assizes in 1767, a stack of chimneys was blown over on the roof, and beat it down over the court. The judge sitting up close to the wall escaped without hurt; but the attorney in the cause and another man were killed, as well as two of the jurymen; and many were wounded. Most of the counsel had left the court, and the judge was summing up, otherwise more deaths must have been caused.

JUDGE STOPPING A NOISE IN COURT.

Lord Hermand, the Scotch judge, while presiding in Court, heard a noise near the door which annoyed him,

and called out to the officer, "What is that noise?" "It's a man, my lord." "What does he want?" "He *wants in*, my lord." "Keep him out!" The man, it seems, did get in, and soon afterwards a like noise was renewed, and his lordship again demanded, "What's the noise there?" "It's the same man, my lord." "What does he want now?" "He *wants out*, my lord." "Then *keep him in*—I say, *keep him in*!"

A WAG BRINGING A MUSICAL SNUFF-BOX INTO COURT.

When Lord Hermand, the Scotch judge, was trying criminal cases on circuit, some wag put a musical snuff-box in one of the seats, which played "Jack's alive." The music struck the audience with consternation, and the judge stared in the air, looking unutterable things, and frantically called out to the usher or macer, "Macer, what, in the name of God, is that?" The macer looked round in vain, when the wag called out, "It's 'Jack's alive,' my lord." "Dead or alive, put him out this moment," called out the judge. "We cannot grip him, my lord." "If he has the art of hell, let every man assist to arraign him before me, that I may commit him for this outrage and contempt." Everybody tried to discover the offender, and fortunately the music ceased. But it began again half an hour afterwards, and the judge exclaimed, "Is he there again? By all that's sacred, he shall not escape me this time—fence, bolt, bar the doors of the court, and at your peril let a man living or dead escape." All was bustle and confusion, the officers looking east and west, and up in the air, and down to the floor; but the search was vain. The judge at last began to suspect witchcraft, and exclaimed, "This is a *deceptio auris*—it is absolute delusion, necromancy, phantasmagoria." And to the day of his death the judge never understood the precise origin of this unwonted visitation.

THE USHER OF THE COURT.

One of the ushers of the Court of Session who was rather noted for drunkenness was carrying in a couple of candles as the Court was sitting late one afternoon.

Mr. William Carmichael, advocate, who was remarkably humpbacked, and greatly loved a little mischief, stretched out his legs as the usher passed, which made that functionary come down with great noise. The Lord President flew into a great passion, calling out, "You drunken beast, this is insufferable." The usher, gathering himself up with dignity, addressed his lordship slyly: "An't please your lordship, I am not drunk; but the truth is, as I was bringing in the candles, I fell over Mr. William Carmichael's back." This sally put the whole Court in good humour.

ANOTHER USHER OF THE COURT.

O'Connell told a story of an usher in an Irish court one day being anxious to thin the court, and who called out: "All ye blackguards that isn't lawyers, quit the coort!"

OLD GRIEVANCE OF CHANCERY DELAYS.

"The Chancery," says a contemporary pamphlet in the time of the Commonwealth, "is a great grievance, one of the greatest in the nation. It is confidently affirmed by knowing gentlemen of worth, that there are depending in that court 23,000 causes; that some of them have been depending five, some ten, some twenty, some thirty years and more; there have been spent in causes many hundreds, nay thousands of pounds, to the undoing of many families; what is ordered one day is contradicted the next, so as in some causes there have been 500 orders."

ONE ORIGIN OF CHANCERY DELAYS.

Lord Keeper Bridgman had been a celebrated lawyer, and sat with high esteem in the place of Lord Chief Justice of the Common Pleas. The removing him from thence to the Chancery did not at all contribute any increase to his fame, but rather the contrary, for he was timorous to an impotence, and that not mended by his great age. He laboured very much to please everybody, and that is a temper of ill consequence in a judge. It was

observed of him, that if a case admitted of divers doubts, which the lawyers call points, he would never give all on one side, but either party should have somewhat to go away with. And in his time the Court of Chancery ran out of order into delays and endless motions in causes, so that it was like a field overgrown with briars. And what was the worst of all, his family were very ill qualified for that place; the lady being a most violent intriguress in business, and his sons kept no good decorum whilst they practised under him; and he had not a vigour of mind and strength to coerce the cause of so much disorder in his family.—North's Life of Lord Keeper, 88.

ELDON'S CHANCERY DOUBTS, AND KEEPING THE KING'S CONSCIENCE.

Lord Brougham said of Eldon: "He who would adjourn a private estate bill for weeks unable to make up his mind on one of its clauses, or would take a month to decide on what terms some amendment should be allowed in a suit, could without one moment's hesitation resolve to give the king's consent to the making of laws, when his majesty was in such a state of mental disease that the keeper of his person could not be suffered to quit the royal closet for an instant, while his patient was with the keeper of his conscience performing the highest function of sovereignty."

DEALING WITH THE SUITOR'S MONEY IN CHANCERY.

To check abuses in time to come, Lord King, when Chancellor, with the concurrence of the Master of the Rolls, remodelled Lord Macclesfield's order, forbidding Masters in Chancery any longer to make use of suitors' money for their own advantage, and commanding them forthwith to pay all sums received by them into the Bank of England. This for the future secured the principal of the money, but would not have done justice to the suitors, whose fortunes might be locked up many years in the course of administration, or pending a complicated litigation. A plan was therefore devised whereby

interest should be allowed to them in the meantime, the money being vested in public securities in the name of a new officer, acting under the control of the Lord Chancellor, to be called the Accountant-General. This was carried into effect by two Acts of Parliament, 12 Geo. I. cc 32, 33, the one entitled, "An Act for better securing the Monies and Effects of the Suitors of the Court of Chancery;" and the other, "An Act for the Relief of the High Court of Chancery." "Happy had it been," says Oldmixon, "if the Acts had farther relieved the suitors in that court, by regulating the litigious, tedious, and expensive suits, and the enormous extortions of hungry solicitors, and the vexatious and chargeable attendances upon Masters, which render even a Court of Equity in too many instances equally ruinous and terrible." But the difficulties in the way of further improvement were probably then insurmountable.—4 Camp. Chanc., 639.

CHAPTER IV.

*ABOUT ADVOCATES, PLEADERS, CONVEY-
ANCERS, AND ATTORNEYS.*

THE MORALITY OF ADVOCACY.

"I asked Dr. Johnson," says Boswell, "whether, as a moralist, he did not think that the practice of the law, in some degree, hurt the nice feeling of honesty."

Johnson. "Why, no, sir, if you act properly. You are not to deceive your clients with false representations of your opinion: you are not to tell lies to a judge."

Boswell "But what do you think of supporting a cause you know to be bad?" *Johnson.* "Sir, you do not know it to be good or bad till the judge determines it. I have said that you are to state facts clearly; so that your thinking, or what you call knowing, a cause to be bad, must be from reasoning, must be from your supposing your arguments to be weak and inconclusive. But, sir, that is not enough. An argument which does not convince yourself, may convince the judge to whom you urge it, and if it does convince him, why, then, sir, you are wrong, and he is right. It is his business to judge: and you are not to be confident in your own opinion that a cause is bad, but to say all you can for your client, and then hear the judge's opinion."

Boswell. "But, sir, does not affecting a warmth when you have no warmth, and appearing to be clearly of one opinion, when you are, in reality, of another opinion—does not such dissimulation impair one's honesty? Is there not some danger that a lawyer may put on the same mask in common life, in the intercourse with his friends?" *Johnson.* "Why, no, sir. Everybody knows

you are paid for affecting warmth for your client; and it is, therefore, properly no dissimulation; the moment you come from the bar you resume your usual behaviour. Sir, a man will no more carry the artifice of the bar into the common intercourse of society, than a man who is paid for tumbling upon his hands will continue to tumble upon his hands when he should walk upon his feet."

A CLIENT ENTITLED TO HAVE HIS VIEWS PUT IN THE BEST WAY.

"Sir," said Dr. Johnson to Sir William Forbes, "a lawyer has no business with the justice or injustice of the cause which he undertakes, unless his client asks his opinion, and then he is bound to give it honestly; the justice, or injustice, of the cause is to be decided by the judge. Consider, sir, what is the purpose of courts of justice—it is that every man may have his cause fairly tried by men appointed to try causes. A lawyer is not to tell what he knows to be a lie—he is not to produce what he knows to be a false deed; but he is not to usurp the province of the jury and of the judge, and determine what shall be the effect of evidence, what shall be the result of legal argument. If, by a superiority of attention, of knowledge, of skill, and a better method of communication, a lawyer hath the advantage of his adversary, it is an advantage to which he is entitled. There must always be some advantage on one side or the other, and it is better that that advantage should be by talents than by chance."—Boswell's Johnson.

THE FUNCTION OF THE BAR.

D'Aguesseau, the celebrated French advocate, said of the bar: "It is an order as ancient as the magistracy, as noble as virtue, as necessary as justice, it is distinguished by a character which is peculiar to itself, and it alone always maintains the happy and peaceful possession of independence. The advocate is free without being useless to his country; he devotes himself to the public without being a slave to it."

Berryer, at a later date, said this: "The independence of the bar is a bulwark for each citizen against the rage and the violence of authority, against the violation of law, against unjust prosecutions. We have everything to dread if it be weakened: we have no reason to despair while it is maintained and respected. *There* will triumph, I trust, the persevering efforts of right reason, of the spirit of justice, of public integrity. There, at least, in the words of D'Aguesseau, will resound the last cry of expiring freedom."

ERSKINE ON COUNSEL AND CLIENT.

Several of Erskine's friends earnestly persuaded him to refuse the retainer of Tom Paine to defend him against the prosecution for seditious libel; and among these was Lord Loughborough, who ought to have known better, but who thought that at last he had the Great Seal within his grasp. Erskine himself, many years after, gave the following amusing account of their interview: "In walking home one dark November evening, across Hompstead Heath, I met Loughborough coming in an opposite direction, apparently with the intention of meeting me. He was also on foot 'Erskine,' he said, 'I was seeking you, for I have something important to communicate to you.' There was an unusual solemnity in his manner, and a deep hollowness in his voice. We were alone; the place was solitary; the dusk was gathering around us; and not a voice, not a footstep, was within hearing. I felt as Hubert felt when John half opened, half suppressed the purpose of his soul, in that awful conference which Shakespeare has so finely imagined. After a portentous pause, he began: 'Erskine, you must not take Paine's brief.' 'But I have been retained, and I will take it, by G—d,' was the reply." Messages to the same effect were brought to Erskine from the Prince of Wales; but he was inexorable. By many well-meaning people, ignorant of professional etiquette, and of what is required by a due regard for the proper administration of criminal justice, his obstinacy was much condemned, and scurrilous attacks were made upon him in the Government newspapers. If the advocate

refuses to defend from some opinion he may have of the charge or of the defence, he assumes the character of the judge; nay, he assumes it before the hour of judgment; and, in proportion to his rank and reputation, puts the heavy influence of perhaps a mistaken opinion into the scale against the accused, in whose favour the benevolent principle of English law makes all presumptions, and which commands the very judge to be his counsel. In his speech Erskine proceeds to the defence, and lays down, with admirable discrimination, the limits of free discussion on political subjects. Erskine afterwards said, "I owe it to his Royal Highness to express my opinion that, circumstanced as he was, he had no other course to take in those disgraceful and disgusting times, and that my retainer for Paine was made a pretext by the King's Ministers for my removal."—6 Camp. Chanc., 457.

ERSKINE A HEAVEN-BORN ADVOCATE.

Erskine being junior, in his first case threw out insinuations against Lord Sandwich for his interference with Greenwich Hospital. Lord Mansfield, observing the counsel heated with his subject, and growing personal on the First Lord of the Admiralty, told him that Lord Sandwich was not before the Court. *Erskine*. "I know that he is not formally before the Court, but for that very reason I will bring him before the Court. He has placed these men in the front of the battle in hopes to escape under their shelter, but I will not join in battle with them; their vices, though screwed up to the highest pitch of human depravity, are not of dignity enough to vindicate the combat with me. I will drag *him* to light, who is the dark mover behind this scene of iniquity. I assert that the Earl of Sandwich has one road to escape out of this business without pollution and disgrace, and that is by publicly disavowing the acts of the prosecutors, and restoring Captain Baillie to his command! If he does this, then his offence will be no more than the too common one of having suffered his own personal interest to prevail over his public duty in placing his voters in the hospital. But if, on the contrary, he continues to protect the prosecutors, in spite of

the evidence of their guilt, which has excited the abhorrence of the numerous audience who crowd this court,—if he keeps this injured man suspended, or dares to turn that suspension into a removal,—I shall then not scruple to declare him an accomplice in their guilt, a shameless oppressor, a disgrace to his rank, and a traitor to his trust. But as I should be very sorry that the fortune of my brave and honourable friend should depend either upon the exercise of Lord Sandwich's virtues or the influence of his fears, I do most earnestly entreat the Court to mark the malignant object of the prosecution, and to defeat it. I beseech you, my lords, to consider that even by discharging the rule, and with costs, the defendant is neither protected nor restored. I trust, therefore, your lordships will not rest satisfied with fulfilling your judicial duty; but, as the strongest evidence of foul abuses has by accident come collaterally before you, that you will protect a brave and public-spirited officer from the persecution this writing has brought upon him, and not suffer so dreadful an example to go abroad into the world, as the ruin of an upright man for having faithfully discharged his duty. My lords, this matter is of the last importance. I speak not as an *advocate* alone. I speak to you as a *man*, as a member of a state whose very existence depends upon her naval strength. If our fleets are to be crippled by the baneful influence of elections, *we are lost indeed*. If the seaman, while he exposes his body to fatigues and dangers, looking forward to Greenwich as an asylum for infirmity and old age, sees the gates of it blocked up by corruption, and hears the riot and mirth of luxurious landmen drowning the groans and complaints of the wounded, helpless companions of his glory, he will tempt the seas no more. The Admiralty may press his body, indeed, at the expense of humanity and the constitution, but they cannot press *his mind*,—they cannot press the heroic ardour of a British sailor; and instead of a fleet to carry terror all round the globe, the Admiralty may not be able much longer to amuse us even with the peaceable, unsubstantial pageant of a review. Fine and imprisonment! The man deserves a palace instead of a prison who prevents the palace built by the public bounty of his country from being

converted into a dungeon, and who sacrifices his own security to the interests of humanity and virtue. And, now, my lords, I have done; but not without thanking your lordships for the very indulgent attention I have received, though in so late a stage of this proceeding, and notwithstanding my great incapacity and inexperience. I resign my client into your hands, and I resign him with a well-founded confidence and hope; because that torrent of corruption which has unhappily overwhelmed every other part of the constitution is, by the blessing of Providence, stopped here by the sacred independence of the judges. I know that your lordships will determine according to law; and therefore, if an information should be suffered to be filed, I will bow to the sentence, and shall consider this meritorious publication to be indeed an offence against the laws of this country; but then I shall not scruple to say, that it is high time for every honest man to remove himself from a country in which he can no longer do his duty to the public with safety, where cruelty and inhumanity are suffered to impeach virtue, and where vice passes through a court of justice unpunished and unreprieved."—Erskine's Speeches.

COUNSEL COLLECTING HIS THOUGHTS.

Justice Gurney, when at the bar, was considered an adept in criminal law, and at the Old Bailey he rose mainly by his gravity, and the skilful use of two phrases, "Hush!" and "Shut that door!" Whenever he wished for a moment's pause to collect his thoughts or to give his witness time, he affected to hear a pin fall, and complained of the noise. "My lord, it is impossible for the jury to hear what I have to say in this confusion." By steadily adhering to this course the ushers and door-keepers were forced to attend to their duty; and those who were not familiar with the court inferred that as silence was more complete while Mr. Gurney was speaking, he must be better worth listening to than any other man. They listened: what they heard was good, though not wonderful. His reputation increased till he rose to the bench.

COUNSEL HAVING THE LAST WORD.

O'Connell said of Judge Day: "No man would take more pains to serve a friend, but as a judge they could scarcely have placed a less efficient man upon the bench. He once said to me at the Cork assizes, 'Mr. O'Connell, I must not allow you to make a speech. The fact is, I am always of opinion with the last speaker, and therefore I will not let you say one word.' 'My lord,' said I, 'that is precisely the reason why I'll let nobody have the last word but myself, if I can help it.' I had the last word, and Day charged in favour of my client."

A FRENCH FOPPISH ADVOCATE DISCONCERTED.

A young French advocate, in the course of his address to the Court, flourished about his hand in such a manner as to show off a magnificent diamond ring. He was young, good-looking, and pleading for a lady of quality who demanded a separation from her husband. The husband who happened to be present, interrupted him in the middle of a period, and turning to the judges exclaimed theatrically, "My lords, you will appreciate the zeal which Monsieur M. is displaying against me, and the sincerity of his argument, when you are informed that the diamond ring he wears is the very one which I placed on my wife's finger on the day of that union he is so anxious to dissolve." The Court, said M. Berryer, who relates the story, was struck, and rose immediately. The cause was lost, and the advocate never had another.

To add to the poignancy of the catastrophe, the husband's insinuation had no foundation in fact.

SPEECH FOR A CLIENT INJURED BY AN ACCIDENT.

Being counsel for a person who, whilst travelling in a stage-coach, which started from the "Swan with Two Necks," in Lad Lane, had been upset, and had his arm broken, Erskine thus with much gravity began: "Gentlemen of the jury, the plaintiff in this case is Mr. Beverley, a respectable merchant of Liverpool, and the defendant is Mr. Nelson, proprietor of the 'Swan

with Two Necks,' in Lad Lane,—a sign emblematical, I suppose, of the number of necks people ought to possess who ride in his vehicles."

COUNSEL USING AN OATH IN HIS SPEECH.

There was witnessed in 1781 the single instance recorded in our judicial annals of an advocate in a court of justice introducing an oath by the sacred name of the Divinity; and it was introduced not only without violation or offence to pious ears, but with the thrilling sensations of religious rapture, caught from the lips of the man who, as if by inspiration, uttered the dreadful sound. Arguing upon the construction of certain words attributed to Lord George Gordon, Erskine, his counsel, exclaimed, "But this I will say, that he must be a ruffian, and not a lawyer, who would dare to tell an English jury that such ambiguous words, hemmed closely between others not only innocent, but meritorious, are to be adopted to constitute guilt by rejecting both introduction and sequel." Then, after noticing the offer made to the Government by the prisoner himself to quell the disturbance, Erskine ventured upon the following bold and extraordinary sentence: "I say, by God, that man is a ruffian who shall, after this, presume to build upon such honest, artless conduct, as an evidence of guilt." The sensation produced by this daring appeal to the feelings of the jury, and by the magic of the voice, the eye, the face, the action with which it was uttered, is related by those present on this memorable occasion to have been electrical. Some have supposed that the oath was premeditated; but it has been well observed that intuitive and momentary impulse could alone have prompted a flight which it alone could sustain; and as its failure would indeed have been fatal, so its eminent success must be allowed to rank it among the most famous feats of oratory.—6 Camp. Chanc., 411.

IRISH COUNSEL USING THE SIMILE OF THE EAGLE.

A young Irish barrister in course of his speech began to use a simile of "the eagle soaring high above the

mists of the earth, winning its daring flight against a midday sun till the contemplation becomes too dazzling for humanity, and mortal eyes gaze after it in vain." Here the orator was noticed to falter, and lose the thread of his speech, and sat down after some vain attempts to regain it. The judge said, "The next time, sir, you bring an eagle into court, I should recommend you to clip its wings."

ERSKINE ON THE INDIAN CHIEF.

Erskine in one of his famous speeches used this figure: "Gentlemen, I think I can observe that you are touched with this way of considering the subject; and I can account for it. I have not been considering it through the cold medium of books, but have been speaking of man and his nature, and of human dominion, from what I have seen of them myself, amongst reluctant nations submitting to our authority. I know what they feel, and how such feelings can alone be repressed. I have heard them in my youth from a naked savage, in the indignant character of a prince surrounded by his subjects, addressing the governor of a British colony, holding a bundle of sticks as the notes of his unlettered eloquence. 'Who is it,' said the jealous ruler over the desert encroached upon by the restless foot of the English adventurers—'who is it that causes this river to rise in the high mountains, and to empty itself into the ocean? Who is it that causes to blow the loud winds of winter, and that calms them again into summer? Who is it that rears up the shade of those lofty forests, and blasts them with the quick lightning, at his pleasure? The same Being who gave to you a country on the other side of the waters, and gave ours to us; and by this title we will defend it,' said the warrior, throwing down his tomahawk upon the ground, and raising the war-sound of his nation. These are the feelings of subjugated men all round the globe; and, depend upon it, nothing but fear will control where it is vain to look for affection."—*Erskine's Speeches.*

COUNSEL SLANDERING THIRD PARTIES IN DEFENCE OF
HIS CLIENT.

At a trial of a cashier of a bank for embezzlement, Rufus Choate, the American advocate, appeared for the defendant, and argued with great force that his client had been compelled to do what he did by the order of the directors, and they alone were responsible, and ought to be punished. He went on flaying the directors, when one of them being present, rose in court in great anger to deny all these insinuations. Choate, without stopping, blandly said, "I beg the director to be seated, as he wishes to be treated with moderation in a court of justice." Then instantly breaking out into a great scream, which he alone could make with dramatic effect: "I tell you, gentlemen of the jury, my client was as helpless in the hands of these directors as an infant surrounded by ten thousand Bengal tigers!" Everybody in court was appalled at the vehemence of the orator, and not a soul dared to smile.

IRISH COUNSEL ON CATHOLIC EMANCIPATION.

Curran, in defending Rowan, the Secretary of the United Irishmen, for seditious libel, had this splendid burst: "I speak in the spirit of British law, which makes liberty commensurate with and inseparable from British soil, which proclaims even to the stranger and sojourner, the moment he sets his foot upon British earth, that the ground on which he treads is holy, and consecrated by the genius of universal emancipation. No matter in what language his doom may have been pronounced—no matter what complexion incompatible with freedom an Indian or an African sun may have burnt upon him—no matter in what disastrous battles his liberties may have been cloven down, nor with what solemnities he may have been devoted upon the altar of slavery—the very first moment he touches the sacred soil of Britain the altar and the god sink together in the dust, his soul walks abroad in her own majesty, his body swells beyond the measure of the chains which burst from around him, and he stands redeemed, regenerated,

and disenthralled by the irresistible genius of universal emancipation.”—Curran’s Speeches.

BROUGHAM’S PERORATION IN DEFENCE OF THE QUEEN.

Lord Brougham, when defending the Queen, concluded thus: “Such, my lords, is the case now before you. Such is the evidence in support of this measure, evidence inadequate to prove a debt, impotent to deprive of a civil right, ridiculous to convict of the lowest offence, scandalous if brought forward to support a charge of the highest nature which the law knows, monstrous to ruin the honour, to blast the name of an English queen! What shall I say, then, if this is the proof by which an act of judicial legislation, a parliamentary sentence, an *ex post facto* law, is sought to be passed against a defenceless woman? My lords, I pray you to pause; I do earnestly beseech you to take heed! You are standing upon the brink of a precipice—then beware! It will go forth your judgment, if sentence shall go against the Queen. But it will be the only judgment you ever pronounced which, instead of reaching its object, will return and bound back upon those who gave it. Save the country, my lords, from the horrors of this catastrophe; save yourselves from this peril; rescue that country of which you are the ornaments, but in which you can flourish no longer, when severed from the people, than the blossom when cut off from the roots and the stem of the tree. Save that country, that you may continue to adorn it; save the crown which is in jeopardy, the aristocracy which is shaken; save the altar, which must stagger with the blow that rends its kindred throne! You have said, my lords, you have willed—the Church and the King have willed—that the Queen should be deprived of its solemn service. She has, instead of that solemnity, the heartfelt prayers of the people. She wants no prayers of mine. But I do here pour forth my humble supplications at the Throne of Mercy, that that mercy may be poured down upon the people in a larger measure than the merits of its rulers may deserve, and that your hearts may be turned to justice.”—Brougham’s Speeches.

Lord Brougham, according to Lord Campbell, said that

he had rewritten the above peroration seventeen times before he was satisfied with it.

AN ADVOCATE INVOKING THE GOD OF ELOQUENCE.

It was said of John Adams, the President of the United States, that he once invoked the god of eloquence in a celebrated speech on Independence. He denied this and gave the following as a correct version of his exordium: "This is the first time of my life when I seriously wished for the genius and eloquence of the celebrated orators of Athens and Rome, called in this unexpected and unprepared manner to exhibit all the arguments in favour of a measure the most important, in my judgment, that ever has been discussed in civil or political society. I have no wit or oratory to exhibit, and can produce nothing but simple reason and plain common sense. I feel myself oppressed by the weight of the subject, and I believe if Demosthenes or Cicero had ever been called to deliberate on so great a question, neither would have relied on his own talents without a supplication to Minerva and a sacrifice to Mercury or the god of eloquence."

AN AMERICAN ADVOCATE ALLUDING TO THE LAST JUDGMENT.

The American advocate, George Evans, thus concluded a famous speech to the jury in defence of Dr. Coolidge, charged with murder: "We are assembled in no ordinary place of justice. We are standing in a temple dedicated to the service of the most high God, where prayer is wont to be made and blessings invoked, where forgiveness and charity are entreated as we mete them out to others, where all teachings suited to our condition are constantly administered. I invoke the solemnity of the place, and the occasion, to impress you with the unspeakable importance of so considering and deciding, that the judgment you are to pronounce shall be that of justice and truth, mingled with mercy and compassion. When your verdict shall have been rendered, this vast assemblage will separate to meet no more—no more on earth. But once—once more all will assemble, not to judge, but

to be judged—to be judged for the deeds done this day. ‘For I saw,’ said the exile at Patmos, ‘I saw the dead, small and great, stand before God, and the books were opened, and the dead, both small and great, were judged out of the things written in the books.’ God grant that on that occasion the blood of no man be found upon your hands!”

“COME FORTH, THOU SLANDERER!”

On Queen Caroline’s trial, when Mr. Denman had to address the House of Lords, that intrepid counsel for the Queen alluded to the rumours that “there are persons, and these not of the lowest condition, and not confined to individuals connected with the public press—not even excluded from your august assembly, who are industriously circulating the most odious and atrocious calumnies against Her Majesty. Can this fact be?” Then after some sentences more, fixing his eye on the gallery, and looking steadily at the Duke of Clarence (William IV.), who sat there, he proceeded thus: “To any man who could even be suspected of so base a practice as whispering calumnies to judges, distilling leprous venom into the ears of jurors, the Queen might well exclaim—‘Come forth, thou slanderer, and let me see thy face! If thou wouldst equal the respectability of an Italian witness, come forth and depose in open court! As thou art, thou art worse than an Italian assassin, because, while I am boldly and manfully meeting my accusers, thou art planting a dagger unseen in my bosom, and converting thy poisoned stiletto into the semblance of the sword of justice!’”

Lord Denman’s biographer says, that “at the passage ‘come forth,’ etc., the advocate raised his voice to the full measure of its magnificent compass, till the old roof rang again, and a thrill of inexpressible emotion pervaded every heart in the densely crowded assembly.”

A CHIEF JUSTICE ENVYING AN ADVOCATE.

When Chief Justice Oliver, an American judge, made a charge to the grand jury, it was usually a vehement

harangue upon politics. Highly complimented one day by his friends on the profound wisdom and irresistible eloquence of his speech, and upon the great impression it had made on the people, he said, "Ah! notwithstanding all that, Mr. John Adams has nothing to do but to go upon the green among the people, and say it is all equivocal and evasive, to destroy the whole effect of it."

This John Adams used to be pointed out by his contemporaries, before he ever became a representative, as one that would yet be the greatest man in North America. He became President in due course.

SUING A LADY FOR MONEY LENT.

A good example of brevity occurred in a case where a gentleman sued a lady for ten guineas, money borrowed. Erskine, for the plaintiff, after observing that when love was over, or out of the question, the laconic style of epistolary writing was the best, said he should simply read her letter: "Sir,—When convenient, you shall have your ten guineas. I despise you.—Catherine Keeling." "That is my case," said Erskine. "I will prove the handwriting." "Is that all?" said Bearcroft, the counsel for defendant. "Yes." "Then I *despise you*." And Justice Buller exclaimed, "Call the plaintiff;" which meant that there was no defence.

COUNSEL FOR DELIRIUM TREMENS.

Mr. Montagu Chambers was counsel for a widow who had been put in a lunatic asylum, and sued the two medical men who signed the certificate of her insanity. The plaintiff's case was to prove that she was not addicted to drinking, and that there was no pretence for treating hers as a case of *delirium tremens*. Dr. Tunstal, the last of plaintiff's witnesses, described one case in which he had cured a patient of *delirium tremens* in a *single night*, and he added, "it was a case of gradual drinking, *sipping all day* from morning till night." These words were scarcely uttered when Mr. Chambers rose in triumph, and said, "My lord, that is *my case*."

COUNSEL IN A PATENT CASE.

Erskine was counsel for a patentee who sued for infringement of a patent for buckles, and with his usual eloquence expatiated on the great improvement made on that article. Taking out his own buckle and exhibiting it to the Court, he exclaimed, "What would my ancestors say were they to rise out of their graves and see me with such an ornament as this?" Mingay, the opposite counsel, at once interposed this remark: "They would be surprised, I dare say, to see you with either *shoes or stockings* !"

LENGTH OF COUNSEL'S SPEECHES.

The time which the Roman advocate might occupy was formerly unlimited; but Pompey, in his third consulship, introduced the clepsydra, or water-glass, by which the pleaders were obliged to measure the duration of their speeches. It seems that the presiding magistrate determined beforehand the length of time or quantity of water which each side might consume at a trial, and clepsydræ of various sizes were used according as much or little time was deemed allowable.

LENGTH OF COUNSEL'S ARGUMENTS.

A very heavy case of *Small v. Attwood* long occupied the courts, being a suit instituted by the plaintiffs, who were directors of the British Iron Company, to set aside a contract for the purchase of a mineral estate in Staffordshire. The argument lasted twenty days. Mr. Knight Bruce spoke for seven days, and Sir E. Sugden, who led on the opposite side, for ten days. After a year's consideration, Lord Lyndhurst, by a surprising effort of memory, delivered the judgment, which extends over fifty pages of the report, without referring to his notes.

SERIOUS RESULT OF AN ADVOCATE'S PROSY SPEECHES.

Sir Samuel Prime was represented as a good-natured but rather dull man,—as an advocate, wearisome beyond comparison. He had to argue an ejectment case on the

circuit. The case excited great interest. The court was full, and the day very hot; nevertheless he spoke for three hours. Early in the cause, a boy managed to clamber to the roof of the court, and seated himself on a transverse beam over the heads of the spectators. Overcome by the heat, and the serjeant's monotonous tones, he fell fast asleep, and, losing his balance, came tumbling down upon the people below. He escaped with a few bruises; but several persons in court were severely hurt. For this offence the serjeant was tried at the Circuit table, after dinner, found guilty, and sentenced to pay three dozen of wine towards the mess, which he did with the greatest possible good humour. Upon the occasion of another lengthy oration, the counsel on the other side rose to address the drowsy jury. "Gentlemen, after the long speech of the learned serjeant——" "Sir, I beg your pardon," interrupted Mr. Justice Nares, "you might say—you might say—after the long *soliloquy*, for my brother Prime has been talking an hour to himself."—2 Woolrych's Serjeants, 559.

COURT BRINGING COUNSEL TO THE POINT.

A French advocate whose pleading seemed far too long in proportion to the subject-matter he was dilating upon, received a hint from the president of the court to abridge his observations. But the advocate, without abridging anything, replied with firmness that what he was saying was essential to his case. The president, hoping at last to silence him, said, "The Court directs you to conclude at once with your proposition." "Very well," said the imperturbable advocate, "then I conclude with the proposition that the Court shall hear me!"

COUNSEL PAUSING FOR A WORD.

Mrs. Powell, the actress, was attending a trial at the assizes when a young barrister was making his first speech to a jury, and he suddenly stopped short, and rather too long. She felt for his situation, and being familiar with the prompter's opportune service, called out, somewhat loudly and peremptorily, "Somebody give him the word—somebody *give him the word*."

AN ADVOCATE CALLED "THE ORATOR OF NATURE."

Patrick Henry, the great advocate of Virginia, was called "the orator of nature," and by his spirit-stirring speeches was said to give the first impulse to the revolution and independence of the United States. Jefferson said Henry was the greatest orator that ever lived. In a great debate in the House of Burgesses of Virginia, when descanting on the tyranny of the Stamp Act, he concluded a grand peroration with Olympian voice thus: "Cæsar had his Brutus, Charles the First his Cromwell, and George the Third—" ("Treason!" cried the Speaker; "Treason! treason!" echoed from all parts of the House. Henry faltered not a moment, but, fixing his eye of fire on the Speaker, he added in measured tones)—"may profit by their example. If this be treason, make the most of it." After this he was stamped as the prime orator of Virginia.

On another great occasion he said: "Our petitions have been slighted, our supplications have been disregarded, and we have been spurned with contempt from the foot of the throne. In vain after these things may we indulge the fond hope of peace and reconciliation. There is no longer any room for hope. If we wish to be free—if we mean to preserve inviolate those inestimable privileges for which we have been so long contending—if we mean not basely to abandon the noble struggle in which we have been so long engaged, and which we have pledged ourselves never to abandon until the glorious object of our contest shall be obtained,—we must fight! An appeal to arms and to the God of hosts is all that is left to us. . . . If we were base enough to desire it, it is now too late to retire from the contest. There is no retreat but in submission and slavery! Our chains are forged. Their clanking may be heard on the plains of Boston. The war is inevitable, and let it come. I repeat it, sir, let it come! It is in vain to extenuate the matter. Gentlemen may cry 'Peace, peace!' but there is no peace. The war is actually begun. The next gale that sweeps from the north will bring to our ears the clash of resounding arms! Our brethren are already in the field. Why stand we here idle? What is it that gentlemen wish?

What would they have? Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty, or give me death!"—Wirt's Life of Henry.

COUNSEL TOO MUCH EMPLOYED.

Lord Brougham says it was once said by Bearcroft, when much employed in House of Commons committees, and seen walking about in the Court of Requests, unmoved by the many calls of his name in all quarters, that he was there to avoid giving undue preference to any of his clients.

At a later date, Charles Austin, the great Parliamentary counsel, was seen riding in Rotten Row one day, when many committees were sitting, in each of which he held a brief. His explanation was, that he did not wish to offend any of his clients by giving his services to one only!

TIME DESTROYING SECURITIES OF TITLE.

Lord Brougham greatly admired the celebrated illustration given by Lord Plunket, which embodied not only a principle, but the very argument in hand—namely, as to prescriptive titles. "If Time destroys the evidence of title, the laws have wisely and humanely made length of possession a substitute for that which has been destroyed. He comes with a scythe in one hand to mow down the muniments of our rights; but in his other hand the law-giver has placed an hour-glass, by which he metes out incessantly those portions of duration which render needless the evidence he has swept away."

Lord Brougham admired the force of Lord Plunket's other celebrated saying as to his becoming a reformer: "Circumstances are wholly changed: formerly Reform came to our door like a felon—a robber to be resisted. He now approaches like a creditor: you admit the justice of his demand, and only dispute the instalments by which he shall be paid."

A YOUNG IRISH COUNSEL'S FIRST SPEECH.

Lord Kenyon's style of oratory reminded people of a young Irishman's account of the first bar-speech he ever heard. "Your lordships perceive that we stand here as our grandmothers' administrators, *de bonis non*; and really, my lords, it does strike me that it would be a monstrous thing to say that a party can now come in, in the very teeth of an act of Parliament, and actually turn us round, under colour of hanging us up, on the foot of a contract made behind our backs."—1 Law and Lawyers, 10.

AN UNPATRIOTIC BUTCHER SUING FOR HIS BEEF.

Patrick Henry, the great American advocate, was defending an army commissary, who, during the distresses of the American army in 1781, had seized two bullocks of John Hook, a wealthy Scotch settler. The seizure was not quite legal. But Henry, for the defence, painted with graphic force the hardships of the patriotic army, naked and frozen, toiling over the ground with bleeding feet. "Where was the man," he said, "who had an American heart in his bosom who would not have thrown open his fields, his barns, his cellars, the doors of his house, the portals of his breast, to have received with open arms the meanest soldier in that little band of famished patriots? Where is the man? *There* he stands; but whether the heart of an American beats in his bosom, you, gentlemen, are to judge." He then painted the surrender of the British troops, their humiliation and dejection, the triumph of the patriotic band, the shouts of victory, the cry of "Washington and liberty," as it rang and echoed through the American ranks, and was reverberated from vale to hill, and then to heaven. "But, hark! what notes of discord are these, which disturb the general joy and silence, the acclamations of victory—they are the notes of *John Hook* hoarsely bawling through the American camp—'Beef! beef! beef!'"

The Court was convulsed with laughter at this sally. The Clerk of Court, unable to command his feelings, and unwilling to commit a breach of decorum within the

precincts, rushed out of the court-house, and rolled himself on the grass in a paroxysm of laughter. The uneasy plaintiff soon after also sought some relief in the open air for another reason, and seeing the clerk tumbling about frantically, said, "Jemmy Steptoe, what the devil ails ye, man?" Mr. Steptoe, after a pause, said he could not help it. "Never mind ye," said Hook; "wait till Billy Cowan gets up: he'll show him the law!" Billy Cowan, however, made no impression on the jury. They, almost by acclamation, gave their verdict for the defendant, and the mob so entirely approved this, that they were anxious to add tar and feathers to the plaintiff in further testimony of their sentiments.—Wirt's Life of Henry.

AN AUCTIONEER SUING FOR HIS COMMISSION.

Mr. Spurrier, an auctioneer, sued Mr. Beard, in 1789, for a sum of £230, his commission of one per cent. for selling an estate. Mr. Christie, auctioneer, a witness for the plaintiff, said the charges were usual, and that "the business of an auctioneer required a knowledge grounded on experience, a proper acquaintance with all the circumstances of the estate, and the mode of preparing proper advertisements to *enlarge the ideas of the public.*"

Erskine, counsel for the defendant, made fun of this account to the jury. He said he found the profession of an auctioneer was infinitely preferable in point of pleasure and profit to that of a barrister, for the difference between the charge of the present plaintiff and his own was as follows:

Auctioneer's charge—To a pleasant journey into Sussex, where I was hospitably entertained (out two days), £230.

Barrister's charge—To pleading from nine in the morning till four in the afternoon, by which I was melted down by fatigue to the size of a silver penny, £10 10s.

Erskine said that if auctioneers were paid the demand in question on every adventure, they would be the richest subjects in the kingdom. By *enlarging the ideas* of the public, which he found was the business of the gentlemen of the hammer, he supposed was meant representing an estate to be worth £20,000 which was only worth £10,000. The plaintiff was nonsuited.

AN ADVOCATE WHO TWISTED A THREAD ROUND HIS FINGERS.

The *Spectator* mentions an instance of a lawyer who, in course of his argument, used always to be twisting about his finger a piece of pack-thread, which the punsters of that time called with some reason the *thread of his discourse*. One day a client of his had a mind to see how he would acquit himself without it, and stole it from him. The consequence was, that the orator became silent in the midst of his harangue, and the client suffered for his waggy by the loss of his cause.

A PROSY SERJEANT'S ELOQUENCE.

Jekyll, the wit of his day, wrote an impromptu on a learned serjeant who was holding the Court of Common Pleas with his glittering eye :

“ Behold the serjeant full of fire,
Long shall his hearers rue it ;
His purple garments *came from Tyre*,
His arguments *go to it*.”

THE VEHEMENCE OF VENETIAN ADVOCATES.

About a hundred years ago Mr. Sharp, the traveller, had occasion to witness the extraordinary manner of the Venetian advocates. “ Every advocate mounts into a small pulpit a little elevated above the audience, where he opens his harangue with some gentleness, but does not long contain himself within those limits. His voice soon cracks, and, what is very remarkable, the beginning of most sentences, while he is under any agitation and seeming enthusiasm in pleading, is at a pitch above his natural voice, so as to occasion a wonderful discord. Then if he means to be very emphatical he strikes the pulpit with his hands five or six times together as quick as thought, stamping at the same time, so as to make the great room resound with this species of oratory. At length, in the fury of his argument, he descends from the pulpit, runs about pleading upon the floor, returns in a violent passion back again to the pulpit, thwacks it with

his hands more than at first, and continues in this rage, running up and down the pulpit several times, until he has finished his harangue. The audience smile now and then at this extravagant behaviour. The advocates seem to be in continual danger of dropping their wigs from their heads, and this sometimes happens. There may be some advocates who speak with more dignity, but those I saw were all men of eminence in their profession."

"THE DRAGON OF WANTLEY" *VERSUS* MORE, GENTLEMAN, ETC.

The most memorable attorney, of whom the order may be proud, seems to have been one More, of More Hall, who was immortalized in the ballad of "The Dragon of Wantley." The locality of Wharnccliffe wood, vulgarly called Wantley, is the property of the Wortley family, near Rotherham, in Yorkshire. More was said to have been the counsellor or attorney who conducted some heavy suit against Wortley, the impropiator of tithes, and who, as such, threatened to devour the property of all the good people round. More lived at More Hall, near the bottom of a wood, and this is alluded to in the ballad as "creeping out of a well." The impropiator, as a monster dragon, ate up trees and forests and houses and churches like geese and turkeys. But More, after ordering a coat of mail from Sheffield, all round with spikes, fought the dragon two days and a night, and all the people got upon the trees and houses to watch the combat. This tithe suit is said to have been carried on in the time of Elizabeth.

COUNSEL DEFYING THE ATTORNEYS.

In the midst of the proceedings of national interest about the Reform Bill, Brougham drew the notice of the public to a combination against himself of the attorneys and solicitors, in consequence, as he said, of a bill he had introduced for the establishment of local jurisdiction, which they thought would lessen their profits. The learned gentleman read a letter addressed to him containing this threat, which he complained of as a breach of privilege. He exclaimed: "Let them not lay the

flattering unction to their souls that I can be prevented by a combination of all the attorneys in Christendom, or any apprehensions of injury to myself, from endeavouring to make justice pure and cheap. These gentlemen are much mistaken if they think I will die without defending myself. The question may be, whether barristers or attorneys shall prevail; and I see no reason why barristers should not open their doors to clients without the intervention of attorneys and their long bills of costs. If I discover that there is a combination against me, I will decidedly throw myself upon my clients—upon the country gentlemen, the merchants and manufacturers—and if I do not, with the help of this House, beat those leagued against me, I shall be more surprised at it than at any misadventure of my life.”—8 Camp. Chanc., 370.

COUNSEL KICKING ATTORNEY.

A young barrister had commenced his forensic career in a novel and rather dangerous manner by kicking an attorney who was opposed to him on an arbitration. The attorney insulted him, and receiving a kick on the breech, brought his action of assault and battery, which was tried at the Lancaster assizes. It was the sporting cause of the assize. John Williams (afterwards a judge), who was for the defence, extracted by a dexterous cross-examination the cause of offence—an insulting speech—and concluded a very effective address for his client with these words—“An insult, a kick, a farthing, all the world over.” The plaintiff obtained his farthing. The counsel for the plaintiff, gathering up his papers, gravely exclaimed, as he left the court, “My client has got more kicks than halfpence.”

A SUBSCRIPTION TO BURY AN ATTORNEY.

O’Connell said there was in his younger days an Irish barrister of the name of Parsons, who had a good deal of humour, and who hated the whole tribe of attorneys. Perhaps they had not treated him very well, but his prejudice against them was very constant and conspicuous. One day, in the Hall of the Four Courts, an

attorney came up to him to beg a subscription towards burying a brother attorney who had died in distressed circumstances. Parsons took out a one-pound note, and tendered it. "Oh, Mr. Parsons," said the applicant, "I do not want so much—I only ask a shilling from each contributor. I have limited myself to that, and I cannot really take more." "Oh, take it, take it," said Parsons; "for God's sake, my good sir, take the pound, and while you are at it bury twenty of them."

THE PRACTICE OF BURYING ATTORNEYS.

A gentleman in the country, who had just buried a relation, an attorney, complained to Foote of the great expenses of a country funeral. "Why, do you *bury* attorneys here?" gravely inquired Foote. "Yes, to be sure: how else?" "Ah! we never do that in London." "No!" exclaimed the other, much surprised, "why, how do you manage, then?" "Why, when the patient happens to die, we lay him out in a room overnight by himself, lock the door, throw open the sash, and in the morning he is entirely off!" "Indeed!" said the gentleman, amazed: "and pray what becomes of him?" "Why, that we cannot exactly tell, not being acquainted with supernatural causes. All that we know of the matter is that there is a strong smell of brimstone in the room next morning!"

ATTORNEY'S BILL OF COSTS.

Curran was counsel for an attorney who sued for a bill of costs. Lord Clare, the judge, said, "Here, now, Mr. Curran, is a flagitious imposition! How can you defend this item—'to writing innumerable letters, £100?'" "Why, my lord," said Curran, "nothing can be more reasonable. It's not a penny a letter."

THE OYSTER AND THE SHELL QUESTION.

The lawyers such a profit make,
As olden stories tell,
'Tis said that they the *oyster* take,
And clients get the *shell*;

But, should a pearl be found, good lack !
As pearls therein may dwell,
Would clients say—"Come, give me back
The *oyster* for the *shell* ? "

Sir John Hamilton, who had suffered much from the persecutions of the law, used to say that an attorney was like a hedgehog: it was impossible to touch him without pricking one's fingers.

A GERMAN LAWYER'S BILL OF COSTS.

In Germany a solicitor sent his bill of costs for business done. In the bill relating to a suit for divorce, he charged the lady one item thus: "Further, 30 sous, for being awoke in the night, and having thought over your matter."

LORD THURLOW'S CONTEMPT OF ATTORNEYS.

Lord Chancellor Thurlow often treated the bar with great rudeness, and his demeanour to the other branch of the profession sometimes awakened recollections of Jeffreys. A solicitor once had to prove a death before him, and being told upon every statement he made, "Sir, that is no proof," at last exclaimed, much vexed, "My lord, it is very hard that you will not believe me: I knew him well to his last hour; I saw him dead and in his coffin, my lord. My lord, he was my client!" "Oh, why did you not tell me that before? I should not have doubted the facts for one moment; for I think nothing can be more likely to kill the man than to have you for his attorney." This brutal jest, which was probably thought innocuous by the author of it, is said to have ruined the reputation and the business of the unfortunate victim.

LORD CHANCELLORS' RUDENESS TO ATTORNEYS.

Lord Chancellor Jeffreys was generally rude to counsel, but attorneys fared much worse. When they did anything to displease him, he gave them what he called a lick with the rough side of his tongue; and he terrified

them with his face and voice "as if the thunder of the day of judgment broke over their heads" He had to decide upon a petition against a great city attorney with whom he used to get drunk, and who had given him a great many briefs at Guildhall when still obscure; and one of the affidavits swore, that when the attorney was threatened with being brought before my Lord Chancellor, he exclaimed, "My Lord Chancellor! I made him!"—meaning that he had laid the foundation of his fortune by bringing him early into city business. *Jeffreys*. "Well! then will I lay my maker by the heels." But he would drink and be merry, be familiar with these boon companions overnight, and the next day fall upon them ranting and scolding with insufferable violence.

Very different from Lord Mansfield's vengeance on Dr. Brocklesby, the famous physician, who, having met him in society overnight, and being examined before him in Court next morning, chose to be offensively familiar. Lord Mansfield (summing up to the jury), went on to say, "Gentlemen, the next witness is one Rockleby, or Rocklesby, or Brocklesby, and, first, he swears he is a physician, etc."

ATTORNEY DINING WITH CLIENT.

The *London Chronicle*, 1781, says that an attorney in Dublin having dined by invitation with his client several days, pending a suit, charged six-and-eightpence for each attendance, which was allowed by the master on taxing costs. In return for this, the client furnished the master with a bill for the attorney's eating and drinking, which the attorney refusing to pay, the client brought his action and recovered the amount of his charge. But he did not long exult in his victory, for in a few days afterwards the attorney lodged an information against him before the Commissioners of Excise for retailing wine without a license, and not being able to controvert the fact, to avoid an increase of costs he submitted, by advice of counsel, to pay the penalty, a great part of which went to the attorney, as informer.—10 Notes and Quer., 343.

MEETING AN ATTORNEY IN A STAGE COACH.

Sheridan was travelling to London in a stage coach in order to canvass Westminster in opposition to Mr. Paull. In the coach two friends were conversing, and one, asked by the other whom he was going to vote for, said, "Oh, for Paull, certainly, for though I think him but a shabby fellow, I would vote for any one rather than that rascal Sheridan!" "Do you know Sheridan?" said the other. "Not I, sir, nor should I wish to know him." The conversation then changed; and when the passengers stopped at the next stage for breakfast, Sheridan said to the friend, confidentially, "Pray who is that very agreeable gentleman you were talking to? He is one of the pleasantest fellows I ever met with; I should like to know his name!" "Oh, that," said the gentleman, "is the eminent lawyer Mr. T., who lives in Lincoln's Inn Fields." After the passengers resumed their seats Sheridan turned the conversation to the law, and said, "It is a fine profession. Men may rise in it to the highest eminence in the state. It gives vast scope to the display of talent. Many of the most virtuous and noble characters in history have been lawyers. I am sorry, however, to add that some of the greatest rascals have also been lawyers. But of all the rascals of lawyers I ever heard of, the greatest is one T., who lives in Lincoln's Inn Fields." The stranger fired up at this, and said, very angrily, "I am Mr. T., sir." "And I am Mr. Sheridan," was the retort. The jest was then instantly seen; they shook hands, and the rascally T. was one of the staunchest supporters of the rascally Sheridan.

AN ATTORNEY'S ACTION REFERRED TO ARBITRATION.

An attorney of a very bad character, having a dispute with a bailiff, the latter brought an action against him, which Foote recommended to be compromised. The parties at length agreed upon arbitrators, but requested that in case of a difference of the arbitrators, they might permit them to call upon him (Foote) as umpire, to decide. "Oh, no," said Foote, "I may be partial to one or other of you; but I'll do better—I'll recommend a thief as the common friend of both."

SUCCESS OF YOUNG ATTORNEYS.

A young attorney was asked by a friend how he liked his new profession. The answer was, "Well, I find my *profession* is better than my *practice*!"

A PRISONER WHO WAS AN ATTORNEY

A man was tried before Lord Mansfield, on the Home Circuit, for stealing a silver ladle. In the course of the trial the prosecutor's counsel enlarged on the enormity of the offence, and said it was all the worse, seeing that the prisoner was believed to be an attorney. The judge said in a half whisper to the counsel: "Come, come, don't exaggerate matters; if the fellow had been an attorney you may depend upon it, he would have stolen the *bowl* as well as the *ladle*!"

Two attorneys fought a duel, and one of them shot away the skirt of the other's coat. The second of the good shot, observing the truth of the aim, declared that if the opposite man had been a *client*, he would most probably have hit his *pocket*.

DANGERS OF SERVING WRITS.

A process server in Ireland once made an affidavit to account for his not having personally served a writ. After reciting that he had knocked several times at the door of the debtor, the deponent said, "Whereupon this deponent was proceeding to knock a fourth time, when a man, to this deponent unknown, holding in his hands a musket or blunderbuss, loaded with balls or slugs, as this deponent has since heard and verily believes, appeared at one of the upper windows of the said house, and presenting said musket or blunderbuss at this deponent, threatened that if said deponent did not instantly retire he would send his (this deponent's) soul *to hell*, which this deponent verily believes he would have done, had not this deponent precipitately escaped."

WRITING ON ROUGH PAPER.

A client observed to his attorney that he was writing his bill in equity on very rough paper. "Oh, never mind," said the attorney, "it must be *filed* before it comes into court."

A YOUNG ATTORNEY'S COURTSHIP WITHOUT PREJUDICE.

Mr. Chitty related an anecdote of a young attorney who had been carrying on a correspondence with a young lady, in which he had always, as he thought, expressed himself with the greatest caution. Finding, however, that he did not perform what he had led the lady to believe that he would, she brought an action for breach of promise of marriage against him. When his letters were produced at the trial, it appeared that he had always concluded,

"Always without prejudice,
"Yours faithfully, C D."

The judge facetiously left it to the jury to determine whether these concluding words, being from an attorney, did not mean that he did not intend any prejudice to the lady, and the jury with great good will took the hint and found accordingly for the plaintiff.

CALLING AN ATTORNEY NAMES.

An attorney named *Else*, rather diminutive in his stature, and not particularly respectable in his character, once met Mr. Jekyll. "Sir," said he, "I hear you have called me a pettifogging scoundrel. Have you done so, sir?" "Sir," replied Jekyll, with a look of contempt, "I never said you were a pettifogger or a scoundrel, but I said you were *little else!*"

LAWYERS' CLERKS WRITING WIDE LINES.

A man asked the reason why lawyers' clerks wrote such wide lines in all their legal papers. He was told it was done to keep the peace, for if the plaintiff should be

in one line and the defendant in the next line, the lines being too close together, they might perhaps fall together by the ears.

ORIGIN OF SOLICITORS.

The historian and reporter of the Star Chamber, Hudson, of Gray's Inn, in the time of Charles I., says: "In our age there are stepped up a new sort of people, called *solicitors*, unknown to the records of the law, who, like the grasshoppers in Egypt, devour the whole land; and these I dare say were express maintainers, and could not justify their maintenance upon any action brought. I mean not where a lord or gentleman employed his servant to solicit his cause. for he may justify his doing thereof; but I mean those which are common solicitors of causes, and set up a new profession, not being allowed in any court, or at least not in this court, where they follow causes. And these are the retainers of causes and devourers of men's estates by contention and prolonging suits to make them without end."

Though "attorney" was the original and time-honoured name of the larger half of the legal profession, it has in its turn become somewhat odious, and has been all but superseded since the passing of the Judicature Act of 1875 by the name of solicitor, which itself was somewhat in disfavour at first, as the above account shows.

EPITAPH ON A CONVEYANCER.

Mr. Preston, the conveyancer, died in 1850, having a great reputation as a sound lawyer. He had long the credit of having written many of Lord Brougham's Judgments in Chancery. Sir George Rose wrote on him the following epitaph:

"Stern Death hath cast into abeyance here
A most renowned conveyancer,
Then lightly on his head be laid
The sod that he so oft conveyed.
In certain faith and hope he sure is,
His soul like a *scintilla juris*
In *nubibus* expectant lies
To raise a freehold in the skies."

CONVEYANCER'S DESCRIPTION OF PARTIES TO CONVEYANCES.

In modern deeds it is not usual to describe the personal appearance of seller and purchaser. But in Egypt, in Cleopatra's time, B.C. 107, a conveyance describes both minutely. Thus, "There was sold by Pamouthes, aged about forty-five, of middle size, dark complexion and handsome figure, bald, round-faced, and straight-nosed, and by Semmuthes, aged about twenty-two, of middle size, sallow complexion, round-faced, flat-nosed and of quiet demeanour, children of, etc." (Then the situation of ground is described.) "It was bought by Nechutes the Less, the son of Asos, aged about forty, of middle size, sallow complexion, cheerful countenance, long face, straight nose, with a scar upon the middle of his forehead, for 601 pieces of brass, etc."

CONVEYANCING FORMS IN INDIA.

A Hindoo conveyance, purporting to be a grant of land of very ancient date, referred to the monarch who granted it in this highly coloured style: "Where his innumerable army marched, the heavens were so filled with the dust of their feet that the birds of the air could rest upon it. His elephants moved like walking mountains, and the earth oppressed by their weight mouldered into dust."

RECLUSE HABITS OF LAWYERS.

A story is told of an eminent conveyancer who, having taken his first ride on the first horse he had ever bought, and having occasion to dismount, tied his horse to a gate, and walked back to his chambers quite forgetful of his newly acquired property.

AN INGENIOUS BLACK-LETTER LAWYER.

Noy was a diligent black-letter lawyer in the time of Charles I., who had an affected morosity, as Clarendon described it. It was he who, in order to compensate the

Crown for the loss of revenue sustained by the sale of Crown lands and the grants of new pensions, revived the old forest laws, which were exercised by the Earl of Holland with the greatest rigour, and produced the most grievous discontent. By him also were first projected and drawn by his own hand the memorable writs of ship-money—designed, in the words of Clarendon, “for a spring and magazine that should have no bottom, and for an everlasting supply of all occasions.” He also moulded the odious project of a monopoly in soap. In short, Noy thought, as Clarendon remarks, “that he could not give a clearer testimony that his knowledge in the law was greater than all other men’s, than by making that law, which all other men believed not to be so.” The wits made an anagram of his name: “William Noy—I moyl in law.” He went to Tunbridge Wells, and died there at the age of fifty-eight, where all the vintners drank carouses of joy now he was gone, for they were in hope to dress meat again, and sell tobacco, beer, sugar, and faggots. The players also on the stage rejoiced at his death. Noy left an odd will, by which, after a few legacies, he gave all the residue to his eldest son Edward, “to be consumed and scattered, for I never hoped better.” The only good thing Noy ever did was to discover and advance Lord Hale, then an obscure youth.

A FEE SIMPLE IS THE HIGHEST ESTATE.

Chief Justice Gibbs once told Lord Campbell this anecdote of Serjeant Vaughan, who, although a popular advocate, and afterwards made a judge, was utterly ignorant of the law of real property, and terribly alarmed lest he should commit some absurd blunder. “He was arguing a real property case before me, of which he knew no more than the usher; and he laid down Preston’s proposition that ‘an estate in fee simple is the highest estate known to the law of England.’ I, wishing to frighten him, pretended to start, and said, ‘What is your proposition, brother Vaughan?’ When, thinking he was quite wrong, and wishing to get out of the scrape, he observed, ‘My lord, I mean to contend that an estate in fee simple is one of the highest estates known to the

law of England—that is, my lord, that it may be under certain circumstances—and sometimes is so.’ ”—3 Camp. C.J.s, 238.

A CONVEYANCER'S POLITICS.

“During all the troubles of the times,” says Roger North, “Sir Orlando Bridgman, called ‘the father of conveyancers,’ lived quiet in the Temple, a professed and known Cavalier; and no temptation of fear or profit ever shook his principle. He lived then in the great business of conveyancing, and had no clerks but such as were strict Cavaliers. One, I have heard, was so rigid that he could never be brought to write Oliver with a great *O*. And it was said, the attorney (Palmer was made Attorney-General on the restoration) chose to purchase the manor of *Charleton* because his master’s name (Charles) sounded in the style of it.”

A BLACK-LETTER CONVEYANCER'S ELOQUENCE.

Mr. Hargrave, the conveyancer, thus described the Hon. Charles Yorke, who died a rising lawyer: “That modern constellation of English jurisprudence, that elegant and accomplished ornament of Westminster Hall in the present century (1792), the Honourable Charles Yorke, Esq.; whose ordinary speeches as an advocate were profound lectures; whose digressions from the exuberance of the best juridical knowledge were illuminations; whose energies were oracles; whose constancy of mind was won into the pinnacle of our English forum at an inauspicious moment; whose exquisiteness of sensibility at almost the next moment from the impressions of imputed error stormed the fort even of his cultivated reason, and so made elevation and extinction contemporaneous; and whose prematureness of fate, notwithstanding the great contributions from the manly energies of a Northington, and the vast splendour of a Camden, and notwithstanding also the accessions from the two rival luminaries which have more latterly adorned our equitable hemisphere (Thurlow and Wedderburn), cause an almost insuppliable interstice in the science of English equity. To have been

So late as 1650 the French law books treated of the proper procedure against animals, such as rats, locusts, flies, and eels and leeches, and the mode of appointing counsel to defend them. In Switzerland, criminal prosecutions were often brought against worms.

A FRENCH LAWSUIT AGAINST CATERPILLARS.

Nicholas Chorier, a French historian, mentions that in 1584 the heavy rains brought on a vast number of caterpillars. The walls, windows and chimneys were covered with them. The grand vicar of Valence cited the caterpillars before him; he appointed a proctor to defend them. The cause was solemnly argued, and he sentenced them to quit the diocese. But they did not obey. Human justice has no command over the instruments of the justice of the Deity. It was discussed whether to proceed against these animals by anathema and imprecation, or, as it was expressed, by malediction and excommunication. But two priests and two theologians, having been consulted, changed the opinions of the grand vicar, so that afterwards nothing was made use of but adjuration, prayers, and sprinkling holy water. The life of these animals is short, and these ceremonies, having continued several months, received the credit of having miraculously exterminated them.

These prosecutions against animals were common in France. Gui Pape relates that about 1450 he saw a hog hung on a gibbet for killing a child.

THE FRENCH LAWSUIT AGAINST THE RATS.

The famous French lawyer, Chassanee, first established his fame by defending the rats in a process that had been instituted against them in the diocese of Autun. The rats did not appear at the first citation, and their advocate suggested that they had not all been summoned, but those only in a few localities; the proper way was to summon all the rats in every parish. This was held a good plea, and therefore all the rats were duly summoned. They did not however attend, but their advocate suggested that many of them were old and sick, and an extension

of time should be given. This was again allowed but the rats did not come into court at the extended time. The advocate then pleaded as the next excuse that the rats were most anxious to come, but as there were many cats on their way to court, they were entitled to protection in going and coming, otherwise they were afraid to venture out of their holes. Therefore security must be given that the cats would not molest the litigants. The court allowed that this was reasonable; but the owners would not undertake to be bound for the good behaviour of their cats, and so the next appointment of the sitting of the court fell through, and the hearing was adjourned *sine die*.

A SPECIAL PLEADER TAKING OUT HIS PUPILS TO WALK.

An eminent special pleader (probably Baron Wood, in that earlier stage of his career when he was a pleader), after long fagging in chambers with his pupils, and sitting through very complicated matters, thought, as the weather was fine, he would like a walk with his pupils. He accordingly went out, and on going as far as the Inner Temple gate he first looked east, then west, and then north, and he felt perplexed in which of these three directions he should go. He balanced in his mind all the objections, and was so nicely poised in his affections that his pleader's mind could not choose between the three courses, or see any reason for preferring one direction to another. It was at that period of time when Lord Eldon used to take twenty years to decide a similar difficulty, and the debility superinduced by a long career of demurrers and surrebutters was unequal to the emergency. The worthy gentleman thought upon the whole he had better return to chambers, and not tempt Providence by any rash decision on so weighty a matter. So he did not go to the country.

THE OLD PLEADER WATCHING HIS PUPIL TRY HIS HAND.

In ancient Rome, Julianus, the great advocate, took as a pupil a youth of fortune, who wanted to study for the bar. The youth, after a time, during the holidays, pressed

Julianus and Aulus Gellius to go and hear him at Naples plead a case at a court and try his skill. A rival student proposed the following case for solution: "Seven judges had to try a prisoner, and the majority were to determine the sentence. Two of the judges held that the prisoner deserved banishment; two others that he should be fined; and three more that he should be put to death. What was to be the correct punishment?" The pupil of Julianus at once began to discuss this case, and poured out a torrent of language and high-sounding phrases which were all gabble and nonsense, and gave no solution of the controversy. Julianus sat perplexed at the exhibition, and blushed with confusion. After leaving the place, Julianus was asked his opinion as to the performance of his pupil, and he replied: "Don't ask me; *without controversy* this young man is eloquent."

A HORSE GOING TO THE COUNTRY.

In an action against a stable-keeper, for not taking proper care of a horse,—“The horse,” said Mingay, who led for the plaintiff, “was turned into a stable, with nothing to eat but musty hay. To such feeding the horse demurred.” “He should have gone to the country,” retorted Erskine. This, though caviare to the multitude, to a true special pleader is of exquisite relish, “demurring” and “going to the country” being the technical terms for requiring a cause to be decided on a question of law by the judges, or on a question of fact by the jury.

CERTIORARI TO REMOVE TO HEAVEN.

When a cause or judgment is removed from an inferior court to the High Court, the process used is a writ of certiorari. Sir George Croke was in the time of Elizabeth continued one of the judges of the Queen's Bench, and his son-in-law, Sir Harbottle Grimston, wrote in the preface of Croke's Reports that the judge so remained a judge of that court “until a certiorari from the Great Judge of heaven and earth to remove him from a human bench of law to a heavenly throne of glory.”

A counsel named Pashley, who was skilled in magisterial law, was noticed to be very often moving in the Court of Queen's Bench for "a certiorari to bring up" the adjudications of justices to be quashed, this being the form of motion usual in all cases of that description. His business, which was considerable, consisting almost entirely of such cases, a wag observed that Pashley must surely *bring up his children by certiorari!*

THE CHIEF JUSTICE PLEADING IN HIS OWN COURT

During the chief justiceship of Lord Holt, the valuable sinecure office of chief clerk of the Court of Queen's Bench fell vacant, and the Chief Justice gave the appointment to his brother, Roland Holt. The Crown disputed the appointment, claiming the patronage. The matter was brought to a trial at bar, before the three *puisne* justices and a jury. A chair was placed on the floor of the court for the Chief Justice, on which he sat uncovered near his counsel. The practice as to the office was proved, and ultimately a verdict was given against the Crown and in favour of the Chief Justice.

TRIAL OF THE REGICIDES, AND THE INDICTMENT AGAINST THEM.

Lord Chancellor Clarendon's attention was devoted to the trial of the regicides. Although his name was placed in the commission after that of the Lord Mayor of London, he did not take his place on the bench during any of the trials, but he was obliged to exercise a general superintendence over the proceedings. It was without difficulty resolved that the indictment should be for "compassing the death of the king,"—murdering him not being a substantive treason,—and that the decapitation should be laid only as the overt act, to prove the compassing; but very puzzling questions arose whether the decapitation should be alleged to have been committed? The Chancellor ordered the judges to be previously consulted. They agreed that all that was done tending to the King's murder, until the moment before his head was completely severed from his body, was in the time of his own reign,

but that the murder was not perfected till the actual severance, when Charles I. being supposed to have died, a demise of the Crown had taken place, and a new Sovereign must be considered as *de jure* on the throne. They resolved, however, that the compassing should be laid on the 29th of January, 24 Car. 1., and the murder *trecesimo mensis ejusdem Januarii*, without here naming any year of any King; and that the indictment should conclude, *contra pacem nuper domini Regis coron. et dignitat. suas, necnon contra pacem domini nunc Regis coron. et dignitat. suas.*—4 Parl. Hist., 120.

GOOD-LOOKING PLAINTIFFS.

The advocates in ancient Rome gave effect to their appeals by producing on fit occasions the living image of the client's misery, and his claims on the compassion of the courts. Thus, when Antony was defending against the charge of pecuniary corruption, Aquilius, who had successfully conducted the campaign in Sicily against the fugitive slaves, and was unable to disprove or refute the charge, in the midst of his harangue, after appealing in impassioned tones to the services rendered to his country by the brave soldier who stood by his side—he suddenly unloosed the folds of his client's robe, and showed to his fellow-citizens who sat upon his trial the scars of the wounds which had been received in their behalf. They could not resist the effect of such a sight, and Aquilius was acquitted.

A PROFESSIONAL BEAUTY IN COURT.

When Phryne was prosecuted on a capital charge at Athens, her advocate, Hyperides, knowing that she was the most beautiful of women, and the original of the Venus of Praxiteles, took care to place her in full view of her judges, and even arranged the details of her dress to the best advantage. He then used his highest oratorical arts to excite the pity of the court, and so subdued their feelings that they could not find it in their hearts to condemn, and she was acquitted. The result was, that the public prosecutor, Euthias, swore he would never

prosecute another. The court also were so conscious of the disturbing cause of their judgment, that they made a rule that in future no accused person, man or woman, should be present in court at the time of the decision.—Athenæus, B. 13.

THE HANDSOME GIRL WITH THE WOODEN LEG.

On the Northern circuit the famous Jack Lee was retained for the plaintiff in an action for breach of promise of marriage. When the consultation took place, he inquired whether the lady for whose injury he was to seek redress was good-looking. "Very handsome indeed, sir," was the assurance of her attorney. "Then, sir," replied Lee, "I beg you will request her to be in court, and in a place where she can be seen." The attorney promised compliance, and the lady, in accordance with Lee's wishes, took her seat in a conspicuous place, where the jury could see her. Lee, in addressing the jury, did not fail to insist, with great warmth, on the "abominable cruelty" which had been exercised towards "the highly attractive and modest girl who trusted her cause to their discernment;" and did not sit down until he had succeeded in working upon their feelings with great and, as he thought, successful effect. The counsel on the other side, however, speedily broke the spell with which Lee had enchanted the jury, by observing that "his learned friend, in describing the graces and beauty of the plaintiff, ought in common fairness not to have concealed from the jury the fact that the lady had a *wooden leg!*" The court was convulsed with laughter at this discovery, while Lee, who was ignorant of this circumstance, looked aghast; and the jury, ashamed of the influence that mere eloquence had had upon them, returned a verdict for the defendant.—Twiss's Eldon.

THE FRIENDS OF THE PRISONERS.

When Cicero defended Fonteius against the accusations of Induciomarus and the other Gauls who had come to Rome to impeach him of corrupt conduct during his prætorian government, he pointed to the mother and

sister of his client clinging to him in passionate embrace, and reminded the judges that that sister was a vestal virgin, whose chief tie to earth was her brother's existence. "Let it not be said hereafter," he exclaimed, as the affecting scene was acted before their eyes, "that the eternal fire which was preserved by the midnight care and watching of Fonteia, was extinguished by the tears of your priestess. A vestal virgin extends towards you in suppliant prayer those hands which she has been used to lift up to the immortal gods in your behalf. Beware of the danger and the sin you may incur by rejecting the entreaty of her, whose prayers, if the gods were to despise, Rome itself would be in ruins."

CLIENT WISHING TO PLEAD HIS OWN CASE.

It is said that Thelwall, when tried for seditious libel, was a very troublesome client, and frequently interfered indiscreetly in the defence. At one time he was so much dissatisfied that he wrote on a piece of paper, which he threw to Erskine, his counsel, "I'll be hanged if I don't plead my own cause;" upon which his counsel returned for answer, "You'll be hanged if you do."

A CLIENT PRESSING A LAWYER FOR HIS BILL.

A tailor sent his bill to a lawyer, and a message to ask for payment. The lawyer bid the latter to tell his master that he was not running away, and was very busy at that time. The messenger returned and said he must have the money. The lawyer testily answered, "Did you tell your master that I was not running away?" "Yes, I did, sir; but he bade me tell you that *he was*."

"MY UNFORTUNATE CLIENT."

A young counsel who had the reputation of being a very impudent fellow, but whose memory failed him when beginning to recite a long speech which he had prepared, having uttered these words: "The unfortunate client who appears by me—the unfortunate client who appears by me—my lord, my unfortunate client——" the Chief

Justice, Lord Ellenborough, interposed and almost whispered in a soft and encouraging tone—"You may go on, sir; so far the court is quite with you."

Another example of Lord Ellenborough's judicial jocosity is related when the great conveyancer, Mr. Preston, appeared to argue a case in the King's Bench as to a subject of which that counsel was a master. "An estate in fee simple, my lords," said the counsel, "is the highest estate known to the law of England." "Stay, stay," said the Chief Justice, with consummate gravity, "let me take that down." He wrote and read slowly, and emphatically, "An estate—in fee simple—is—the highest estate—known to—the law of England:" adding, "Sir, the Court is much indebted to you for this information."—3 Camp. C.J.s, 237.

A LAW STUDENT IN TRAINING.

The *Tatler*, in 1710, said, "Walking the other day in an inn of court, I saw a more happy and more graceful orator than I ever before had heard or read of. A youth of about nineteen was, in an Indian nightgown and laced cap, pleading a cause before a glass. The young fellow had a very good air, and seemed to hold his brief in his hand rather to help his action than that he wanted any notes. When I first began to observe him I feared he would soon be alarmed; but he was so zealous for his client, and so favourably received by the court, that he went on with great fluency to inform the bench that he humbly hoped they would not let the merit of the cause suffer by the youth and inexperience of the advocate; that in all things he submitted to their candour, and he modestly desired that they would not conclude, that strength of argument and force of reason were inconsistent with grace of action and comeliness of person.

"To me (who see people every day in the midst of crowds, talking only to themselves and of themselves), this orator was not so extravagant a man as another would have thought him; and I took part in his success, and was very glad to find he had in his favour judgment and costs, without any manner of opposition."

COUNSEL'S VOLUBILITY FOR HIS CLIENT.

Lord Jeffrey, when at the bar, was a very rapid speaker. A worthy man from Glasgow, on whom he poured out a long torrent of vituperation in an action for libel, after listening complacently until he had done, said, "Well, he has spoken the whole English language thrice over in two hours!"

A CLIENT NOT KNOWING HOW ILL HE HAD BEEN USED.

Rufus Choate, the American lawyer, defended a blacksmith whose creditor had seized some iron that a friend had lent him to assist in the business after a bankruptcy. The seizure of the iron was said to have been made harshly. Choate thus described it: "He arrested the arm of industry as it fell toward the anvil; he put out the breath of his bellows; he extinguished the fire upon his hearthstone. Like pirates in a gale at sea, his enemies swept everything by the board, leaving, gentlemen of the jury, not so much—not so much as a horseshoe to nail upon the door-post to keep the witches off." The blacksmith, sitting behind, was seen to have tears in his eyes at this description, and a friend noticing it, said, "Why, Tom, what's the matter with you? What are you blubbering about?" "I had no idea," said Tom in a whisper, "that I had been so abominably ab-ab-bused."

DEPOSITING MONEY WITHOUT A WITNESS OR RECEIPT.

An Irish farmer at a fair, not wishing to carry £100 in his pocket, left it in charge of the landlord of the public house. When he returned soon after, the landlord denied he had ever received any such money. Curran was consulted as to the best remedy. He told the farmer to take a friend with him, and go and speak very civilly to the landlord, and say he was convinced he must have left the £100 with some other person, and leave another £100 with him. The farmer did so, but could not see what use this could be. On further consultation, Curran advised him to go by himself to the landlord and ask for the £100; and the farmer did so, and received the

money. But he said he was no better off, for that did not bring back the first £100. Curran then advised the farmer to go again with his friend who witnessed the deposit of the second £100, and ask him for the £100 he saw him leave. The wily landlord saw he was taken off his guard, and gave up the first £100, so that the farmer joyfully went and thanked his counsel for the success of his stratagem.

IMPORTUNATE LANDLORDS PRESSING FOR THEIR RENT.

One Harman, a rich man, having some bad tenants, and being informed that one of them, which owed him money, had furnished himself to go to a fair, walked, as if by accident, to meet him in the way thither. When he saw his tenant he asked him for the rent; the man, willing to dispose of his money otherwise, denied he had any. "Yes, I know thou hast money," said Harman, calling him by his name; "I prithee let me have my rent," and with much importunity the man pulled out his money, and gave all, or the most part of it, to his landlord. This coming to some pragmatical knowledge, the poor man was advised to indict his landlord for robbing him on the highway, which he did. And Harman, for his sordid carriage being ill-beloved in the country, was found guilty, but reprieved by the judges. And hearing the Lord Treasurer had a secretary of his name, applied himself to him, promising to give him all his estate, having no children, if his lord would bring him out of the danger he was in; which by his power with King James I., he did. And the secretary within a short time after, by the other's death, enjoyed an ample estate.—Wilson's Jas. I.

PUTTING THE CONVERSE CASE TO A LITIGIOUS CLIENT.

Sir Walter Scott had promised a friend that he would write a book for his benefit. The friend died before the promise was fulfilled, and his executors insisted that Sir Walter should write a book for the benefit of the widow and children of the deceased. This Sir Walter refused to do. The executors sought the advice of Scarlett, who,

having listened to their case in consultation, said, "Let us suppose the position to be reversed: if Sir Walter Scott had died, should you have required his executors to write a book for the benefit of your clients?" "Oh, no!" exclaimed the executors, convinced at once by this apt hypothesis that they had no case against Sir Walter Scott.

AN UNKNOWN CLIENT RECOGNIZING COUNSEL.

One night walking through St. Giles's by way of a short cut towards home, an Irish woman came up to Mr. Adolphus, the Old Bailey counsel. "Why, Misther Adolphus! and who'd a' thought of seeing you in the Holy Ground?" "And how came you to know who I am?" said Adolphus. "Lord bless and save ye, sir! not know ye? Why, I'd know ye if ye was boiled up in a soup!"—Adolphus' Mem., 158.

COUNSEL REMONSTRATING WITH A CLIENT.

A Westminster Hall anecdote is given of Mr. Clarke, leader of the Midland Circuit—a very worthy lawyer of the old school. His client long refusing to agree to refer to arbitration a cause which judge, jury, and counsel wished to get rid of, he at last said to him, "You d—d infernal fool, if you do not immediately follow my lord's recommendation, I shall be obliged to use strong language to you."

Once, in a council of the Benchers of Lincoln's Inn, the same gentleman, Mr. Clarke, very conscientiously opposed their calling a Jew to the bar. Some tried to point out the hardship to be imposed upon the young gentleman, who had been allowed to keep his terms, and whose prospects in life would thus be suddenly blasted. "Hardship!" said the zealous churchman, "no hardship at all! Let him become a Christian, and be d—d to him!"

A GRATEFUL CLIENT'S LEGACY.

A gentleman in Derbyshire, from admiration of Erskine's public character, had left him by will a considerable landed estate, but the will was defeated by the ignorance of a

country attorney, who recommended that the testator should "suffer a recovery" to confirm it, whereby it was rendered invalid. Erskine used to give an amusing account of the attorney who came to him after the testator's death to announce the intelligence of his being now owner of a great estate, concluding thus: "And your lordship need have no doubt as to the validity of the will; for, after it was made, we suffered a recovery to confirm it." This legal absurdity is corrected by a bill afterwards introduced into Parliament.—6 Camp. Chanc., 663.

A GRATEFUL CLIENT ERECTING A JUDGE'S MONUMENT.

Lord Mansfield, having died at the age of eighty-nine, by his will expressed a wish to be buried in Westminster Abbey, giving as a reason the attachment he felt for the place of his early education, but directing that his funeral should only be attended by his relations and private friends. Accordingly, his remains, attended by all the judges and the bar in a body, were deposited in Westminster Abbey, in the same grave with his deceased wife, between the tombs of Lord Chatham and Lord Robert Manners. And there a splendid monument was erected to his memory—the workmanship of Flaxman—the expense being defrayed by a legacy of £1,500 gratefully bequeathed for this purpose by a client, for whom, when at the bar, by an extraordinary display of his eloquence, he had recovered a great estate.—2 Camp. C.J.s, 561.

A GRATEFUL CLIENT CONFIDING SECRETS.

O'Connell said he was once counsel for a cow-stealer, who was clearly convicted, the sentence being transportation for fourteen years. At the end of that time he returned, and meeting O'Connell, began to talk of the trial. O'Connell asked him how he always contrived to steal the *fat cows*: to which he gravely replied, "Why then, I'll tell your honour the whole secret of that, sir. *Whenever your honour goes to steal a cow*, always go on the worst night you can, for if the weather is very bad,

the chances are that nobody will be up to see your honour. The way you'll always know the fat cattle in the dark is by this token—that the fat cows always stand out in the more exposed places, but the lean ones always go into the ditch for shelter." "So," said O'Connell, "I got that lesson in cow-stealing gratis from my worthy client."

COUNSEL'S OPINION WHETHER AN ACTION WILL LIE.

A case was laid before Erskine by his veteran friend the Duke of Queensberry—better known as "old Q."—as to whether he could sue a tradesman for a breach of contract about the painting of his house? and all the evidence he had to adduce was detailed, which was wholly insufficient. Whereupon Erskine wrote, "I am of opinion, that this action will *not lie*, unless the witnesses *do*."

PARTIES SHOWING WHERE THEIR PROPERTY LIES.

When presiding in the Court of Chancery, Lord Chancellor Hatton disarmed his censurers by courtesy and good humour, and he occasionally ventured on a joke. At one time, when there was a case before him respecting the boundaries of an estate, a plan being produced, the counsel on one part said, "We lie on this side, my lord;" and the counsel on the other part said, "And we lie on this side, my lord;" whereupon the Lord Chancellor Hatton stood up and said, "If you lie on both sides, whom will you have me to believe?"—Bac. Apophth.

THE VILLAGE HAMPDEN AND THE RIGHT OF HIGHWAY.

In the reign of George II., when a footway in Richmond Park to Wimbledon, East Sheen, and Kingston, was shut up by the ranger, and none allowed to pass without a ticket, John Lewis, of Richmond, took a friend with him and demanded entry. On refusal, he laid an indictment for obstruction of the highway, which was tried at the Surrey Assizes, before Sir M. Foster, who overruled many quibbling objections of the Crown counsel.

The court, at the suggestion of the prosecutor, ordered a ladder to be put over the wall; but, in carrying this out, the steps were made so high as to be inaccessible. Lewis complained to the court, and said they had made the steps so wide that neither old men nor children could get over. "The judge said he saw that it was so, and he ordered it to be so constructed that not only children and old men but old women too should be able to get up."

Soon afterwards the king wished a lane to be stopped up, and the steward gave a feast to the chief inhabitants, and after all were in good humour proposed that they should oblige the king by consenting to the alteration; at the same time he urged that it must be unanimous. John Lewis again rose and said that it would be to betray their posterity if they were to give up this right, which was a trust they were bound to maintain, and which their forefathers had handed down to them. The scheme was abandoned, but an Act of Parliament was afterwards passed to shut up the lane.

Another champion named Timothy Bennett, a shoemaker, said he would spend his little (awl) all, which was £700, in fighting for the public rights, for he was unwilling to leave the world worse than he found it!

A CLIENT SEEKING REDRESS FOR BEING SWORN AT.

A client went to consult Rufus Choate, the great American lawyer, as to the proper redress for an intolerable insult and wrong he had just suffered. He had been in a dispute with the waiter at the hotel, who in a paroxysm of rage and contempt told the client "to go to h—ll." "Now," said the client, "I ask you, Mr. Choate, as one learned in the law, and as my legal adviser, what course under these circumstances I ought to take to punish this outrageous insult." Choate looked grave, and told the client to repeat slowly all the incidents preceding this outburst, telling him to be careful not to omit anything, and when this was done Choate stood for awhile as if in deep thought and revolving an abstruse subject; he then gravely said: "I have been running over in my head all the statutes of the United States,

and all the statutes of the commonwealth of Massachusetts, and all the decisions of all the judges in our courts therein, and I may say that I am thoroughly satisfied that there is nothing in any of them that will require you to go to the place you have mentioned. And if you will take my advice then I say decidedly—*don't go.*"—
Choate's Recollect

CHAPTER V.

*ABOUT COUNSEL, CIRCUITS, INNS OF COURT,
AND ATTORNEY-GENERAL.*

JUDGE THREATENING TO COMMIT COUNSEL.

The jury in the Dean of St. Asaph's case withdrew, and in about half an hour returned into court. When their names had been called over, the following scene was enacted. *Clerk*. "Gentlemen of the jury, do you find the defendant guilty or not guilty?" *Foreman*. "Guilty of publishing only." *Erskine*. "You find him guilty of publishing only?" *A Juror*. "Guilty only of publishing." *Buller J.* "I believe that is a verdict not quite correct. You must explain that one way or the other. The indictment has stated that G. means 'Gentleman,' F. 'Farmer,' *the King*, 'the King of Great Britain,' and *the Parliament*, 'the Parliament of Great Britain.'" *Juror*. "We have no doubt about that." *Buller J.* "If you find him guilty of publishing, you must not say the word 'only.'" *Erskine*. "By that they mean to find there was no sedition." *Juror*. "We only find him guilty of publishing. We do not find anything else." *Erskine*. "I beg your lordship's pardon, with great submission, I am sure I mean nothing that is irregular. I understand they say, 'we only find him guilty of publishing.'" *Juror*. "Certainly, that is all we do find." *Buller J.* "If you only attend to what is said, there is no question or doubt." *Erskine*. "Gentlemen, I desire to know whether you mean the word 'only,' to stand in your verdict." *Jurymen*. "Certainly." *Buller J.* "Gentlemen, if you add the word 'only' it will be negating the inuendoes." *Erskine*. "I desire your lordship, sitting here as judge, to record the verdict as given by the jury." *Buller J.* "You say he is guilty

of publishing the pamphlet, and that the meaning of the inuendoes is as stated in the indictment." *Furor*. "Certainly." *Erskine*. "Is the word 'only' to stand part of the verdict?" *Furor*. "Certainly." *Erskine*. "Then I insist it shall be recorded." *Buller* J. "Then the verdict must be misunderstood. Let me understand the jury." *Erskine*. "The jury do understand their verdict." *Buller* J. "Sir, I will not be interrupted." *Erskine*. "I stand here as an advocate for a brother citizen, and I desire that the word 'only' may be recorded." *Buller* J. "Sit down, sir, remember your duty, or I shall be obliged to proceed in another manner." *Erskine*. "Your lordship may proceed in what manner you think fit. I know my duty as well as your lordship knows yours. I shall not alter my conduct." The judge succumbed to Erskine, who had been his old pupil, and the verdict was recorded as given, and it led to further arguments before the full court.—*Ersk. Speeches*.

A JUDGE THREATENING TO COMMIT CURRAN.

Curran, the Irish counsel, offended Justice Robinson. "Sir," exclaimed the judge, in a furious tone, "you are forgetting the respect that you owe to the dignity of the judicial character." "Dignity, my lord," retorted Curran; "upon that point I shall cite you a case from a book of some authority with which you are perhaps not unacquainted. A poor Scotchman, upon his arrival in London, thinking himself insulted by a stranger, and imagining that he was the stronger man, resolved to resent the affront, and taking off his coat, delivered it to a bystander to hold; but, having lost the battle, he turned to resume his garment, when he discovered that he had unfortunately lost that also—that the trustee of his habiliments had decamped during the affray. So, my lord, when the person who is invested with the dignity of the judgment-seat, lays it aside for a moment, to enter into a disgraceful personal contest, it is vain, when he has been worsted in the encounter, that he seeks to resume it—it is in vain that he endeavours to shelter himself behind an authority which he has abandoned." The judge cried out, "If you say another

word, sir, I'll commit you." "Then, my lord, it will be the best thing you'll have committed this year." The judge did not keep his threat; he applied, however, to his brethren to unfrock the daring advocate, but they refused to interfere, and so the matter ended.—Philip's Curran.

A SERJEANT INCAPABLE OF PUTTING A WRONG QUESTION TO WITNESS.

In the court of Common Pleas, on the trial of *Thirtell v. Beams*, Mr. Serjeant Taddy was examining a witness, and asked him a question respecting some event "that had happened since the plaintiff had disappeared from that neighbourhood." Mr. Justice Parke immediately observed, "That's a very improper question, and ought not to have been asked." "That is an imputation," replied the serjeant, "to which I will not submit. I am incapable of putting an improper question to a witness." "What imputation, sir?" inquired the judge, angrily. "I desire that you will not charge me with casting imputations. I say that the question was not properly put, for the expression 'disappear' means 'to leave clandestinely.'" "I say," retorted Serjeant Taddy, "that it means no such thing." "I hope," rejoined the judge, "that I have some understanding left, and as far as that goes, the word certainly bore that interpretation, and therefore was improper." "I never will submit to a rebuke of this kind." "That is a very improper manner, sir, for a counsel to address the court in." "And that is a very improper manner for a judge to address a counsel in." The judge rose and said with great warmth, "I protest, sir, you will compel me to do what is disagreeable to me." "Do what you like, my lord." "Well," said Mr. Justice Parke, resuming his seat, "I hope I shall manifest the indulgence of a Christian judge." "You may exercise your indulgence or your power in any way your lordship's discretion may suggest; it is a matter of perfect indifference to me." "I have the functions of a judge to discharge, and in doing so I must not be reprov'd in this sort of way." "And I," replied the undaunted serjeant, "have a duty to discharge as counsel which I shall discharge

as I think proper, without submitting to a rebuke from any quarter." Anxious to terminate this dispute, in which the dignity of the court was compromised, Mr. Serjeant Lens rose to interfere. "No! Brother Lens," exclaimed Mr. Serjeant Taddy, "I must protest against any interference." Serjeant Lens, however, was not to be deterred from effecting his intention, and addressing the bench, said, "My brother Taddy, my lord, has been betrayed into some warmth;" here he was stopped by Serjeant Taddy seizing him and pulling him back into his place. "I again," he exclaimed, "protest against any interference on my account,—I am quite prepared to answer for my own conduct." "My brother Lens, sir," said Judge Parke, "has a right to be heard." "Not on my account: I am fully capable of answering for myself." "Has he not a right to possess the court on any subject he pleases?" "Not while I am in possession of it," retorted the undaunted advocate, "and am examining a witness." Mr. Justice Parke, then seeing evidently that the altercation could not be advisably prolonged, threw himself back into his chair and was silent.—2 Law and Lawyers, 357.

COUNSEL RULING THE COURT.

Many remember how Mr. Scarlett used to govern the Court of King's Bench. It was marvellous to see how such judges as Abbott, Bayley, Holroyd, and Littledale, submitted to the dictation of the great Nisi Prius leader. On one occasion in the King's Bench, when Scarlett and Adolphus were on opposite sides, the former, after snubbing the counsel and overruling the court, inquired, "Are you aware, Mr. Adolphus, you are not at the Old Bailey?" "I am, sir," retorted Adolphus, "for there the judge presides, not the counsel."

COUNSEL COMPLAINING OF A DIABOLICAL PROSECUTION.

Adolphus, the criminal lawyer, said that an indictment for a libel was tried before Justice Maule, and the learned counsel for the prosecution ended by saying to the jury: "This, gentlemen, is a shameful, an infamous, I may say

a *diabolical* prosecution." "Gentlemen of the jury," said Justice Maule, in summing up, "you are told that this is a diabolical prosecution; but, gentlemen, you must give the devil his due, and find the defendant guilty,"—which happened accordingly.

PRIVY COUNCILLOR SHOULD NOT BE PRACTISING BARRISTER.

When the name of Mr. Nagle was inserted in the list of Privy Councillors of Ireland, in Cromwell's time, the Lord Lieutenant remonstrated to the Lord President in England. His Excellency admitted him to be "a very learned and an honest man, but he was a practising barrister, and it was not etiquette for such to be of the Council. It will not look well that a man who has the honour to be of the King's Privy Council, should be crowding at the bar of the courts of justice bareheaded, and his bag in his hand. I have not heard it was ever yet done but to Sir Francis Bacon, when he was attorney-general, and to satisfy his ambition by the credit he had with the Duke of Buckingham; or rather by importunity he was made a privy councillor, but he never appeared afterwards in Westminster Hall, unless the king's business called him."—2 Camp. Chanc., 348.

A WESTMINSTER HALL CHICKEN.

On some point of law which arose in the House of Commons, Mr. Michael Angelo Taylor had answered the great lawyer, Bearcroft, but not without an apology, "that he himself, who was then but a young practitioner, and, as he might phrase it, a chicken in the law, should venture on a fight with the cock of Westminster Hall!" He then acquired, and he never lost the name of "Chicken Taylor." Although very short in stature, he was of athletic proportions, and Lord Ellenborough said that his father, who was a great artist, had produced him as a "pocket Hercules." But he was more celebrated as an Amphytrion, and Lord Campbell could testify that he gave the best dinners of any man in London. One of these was the ruin of a great motion for Parliamentary

Reform; for while the leading patriots were partaking of it, the House of Commons was counted out. The occurrence gave rise to a very scurrilous, but very witty song in John Bull, written by Sir Alexander Boswell, afterwards killed in a duel for a similar production.

THE EAGLE OF THE BAR.

Normand, who became a French advocate in 1707, was called the Eagle of the Bar, from the dignity and rapidity of his rise. His countenance was handsome, his gestures graceful, and voice soft and clear. All Paris flocked to hear him, and he had a house and equipage of the finest, and entertained men of the highest rank. His scrupulous accuracy was such that it became a proverb that "it was a fact because Normand said it." He once said of his great rival, Cochin, that he had never heard a finer speech than one delivered by Cochin, whereupon the latter replied: "It is evident you are not one of those who hear themselves."

MR. COUNSELLOR THEREFORE.

Serjeant Kelly, of the Irish bar, had an inveterate habit of drawing conclusions directly at variance with his premises. In consequence of this peculiarity he was called "Counsellor Therefore." Curran said he was a perfect human personification of *non sequitur*. One day, meeting Curran near St. Patrick's, he said: "The Archbishop gave us an excellent discourse this morning. It was well written and well delivered. *Therefore* I shall make a point of being at the Four Courts to-morrow at ten." His speeches to the jury were interminable. He would say: "This is so clear a point, gentlemen, that it is paying your understandings but a poor compliment to dwell on it even for a moment. *Therefore* I shall now proceed to explain it to you at greater length." While the court tittered, the serjeant was wholly unconscious of these feats of his own genius for inconsecutiveness.

THE PICKLOCK OF THE LAW.

Judge Rumsey, a Welsh judge, was, according to Aubrey, "so excellent a lawyer that he was called the 'Picklock of

the Law.' He was an ingenious man, and had a philosophical head. He was most curious for grafting, inoculating, and planting, and ponds. If he had any old dead plum-tree or apple-tree he let them stand, and planted vines at the bottom, and let them climb up and they would bear very well. He was one of my counsel in my law suits in Breconshire. He had a kindness for me, and invited me to his house, and told me a great many fine things both natural and antiquarian. He was very facetious and a good musician, played on the organ and lute. He could compose. He was much troubled with phlegm, and being so one winter at the court of Ludlow (where he was one of the counsellors), sitting by the fire spitting and spewling, he took a fine tender sprig and tied a rag at the end, and conceived he might put it down his throat and fetch up the phlegm, and he did so. Afterwards he made the instrument of whalebone. I have oftentimes seen him use it. I could never make it go down my throat, but for those that can it is a most incomparable engine. If troubled with the wind it cures you immediately. It makes you vomit without any pain. It is no pain when down your throat. He would touch the bottom of his stomach with it."

LEADING COUNSEL Eeking OUT AN INCOME.

In ancient Rome, in the first century, some unscrupulous advocates had an ingenious way of making money. Pliny the younger tells this story of his rival Regulus, who was a prosy and fawning time-server, but enjoyed a large practice. This Regulus, hearing that Verania, the wife of Piso, was on her death-bed, went and called upon her, though he knew she hated him, and that her husband had been badly used by him. Regulus professed to be greatly concerned, asked her the day and hour of her birth, and with many contortions and grimaces of sympathy said he would calculate her nativity. He told her she was in a critical state, but he would consult a soothsayer for her—one he could really trust. He soon returned with the best of news, so that the poor lady in her joy called for her tablets to put down this kind friend for a large legacy. Of course she soon got worse, and

with her dying breath she charged him with perjury, but the legacy held good. This Regulus knew another dying person, of consular rank, whose case he pretended to interest himself in, and after working on the invalid's credulity, and beseeching the doctors to prolong his life, also got a legacy put down to him; immediately afterwards he told the doctors it was useless to prolong life, and an easy death was what they should now give him. Pliny says that this Regulus accumulated a fortune of nearly half a million by such dishonourable artifices.

A COUNSEL WHO WAS CALLED THE INDEX.

Roger North says that Attorney-General Palmer was a very great book lawyer, owing to his great and distinct memory; but yet not so great as some have had who have been so full of books and folios, that their understanding was kept truly under, and they knew nothing else. For this reason old Serjeant Waller was called *Index*; and people went for his opinion only to bring away a list of quotations to assist other counsel that understood better.

COUNSEL IN THE HUNTING FIELD.

Curran never joined the hunt, except once, about twenty miles from Dublin. His horse joined very keenly in the sport, but the horseman was inwardly hoping all the while that the dogs would not find. In the midst of his career, the hounds broke into a potato field of a wealthy land-agent, who happened to have been severely cross-examined by Curran some days before. The fellow came up patronisingly, and said, "Oh, sure you are Counsellor Curran, the great lawyer. Now then, Mr. Lawyer, can you tell me by what law you are trespassing on my ground?" "By what law, did you ask, Mr. Malony?" replied Curran; "it must be the *Lex Tally-ho-nis*, to be sure."

COUNSEL AND JUDGES REMEMBERING THEIR CLIENTS' CASES.

A counsel's head is very much like a caravanserai. It is full for a day or two of the minute details of the cases in which he is concerned on the one side or the other, so

that during an argument all these particulars are in full view, and at the finger's end whenever the turns of the case require them to be made available. But after the case is decided, a clean sweep is made, and both counsel and judge utterly forget in a few days the whole budget of facts they were so familiar with for the while, and fresh cases and particulars displace the preceding ones. One day, in arguing a case in the House of Lords before the Lord Chancellor Cranworth, Lord Brougham, and Lord St. Leonards, a counsel in answering a difficulty put by the court exclaimed: "That point was settled in the case of 'Jones v. Smith.' One of your lordships (Lord Brougham, who decided it) will no doubt very well recollect how that very point was raised and decided two years ago." Lord Brougham at once retorted: "God forbid that my head should be filled with such rubbish! I remember nothing at all about it. Let us hear what it was!"

Mr. Bethell and Sir F. Kelly were fighting a case before a Vice-Chancellor, and discussing what was thought at the moment to be quite a new point, but which had in fact been settled by the House of Lords only the previous year, and in which also both of those counsel had been engaged, and which was so remarkable that both might be expected to have recollected it. But neither counsel ever referred to the prior case. After the argument was over, Mr. Bethell being reminded of the former case, and how thoroughly it would have borne out his argument if he had remembered it, exclaimed: "Well, no doubt that case was just in point! It only shows what a rogue that Kelly was not to allude to it, and what a fool I was not to think of it!"

"I HAVE JUST ONE WORD MORE."

Sir Fitzroy Kelly, the last of the chief barons, when at the bar, though an advocate of a most deferential and winning address, was often obliged to continue his argument rather longer than some of the bystanders wished. One favourite little artifice when he was just expected to conclude was this: "I have just one word more to add

as to the last point." When he used this expression the one word almost invariably extended to half an hour, and sometimes half of that again.

The younger Pliny, who was a leading advocate at Rome towards the end of the first century, plumed himself on once making an adroit hit on the abuse of the above phrase. He was defending Varenus, who was accused of peculation; and Julius Africanus, the prosecuting counsel, who professed to have discovered fresh evidence, was more than usually tedious. After being told the time allowed him was "up," he added: "I beg your lordship to permit me to add just one word." He was permitted, and used a good many empty words, and then Pliny was expected by an excited audience to make a long reply. He merely said: "I should have replied if my learned friend had added just that 'one word,' which, no doubt, would have contained all his new matter, but as he did not add it, I have nothing to answer." Pliny says, all in court thought this an admirable apology for holding his tongue, and it benefited his client greatly.

A GRATUITOUS OPINION BY COUNSEL.

Mr. Fazakerly, an eminent counsel, was once stopped by a country gentleman, a neighbour, who asked him about some point then very important to him, and got the opinion verbally. Some time after the gentleman called on the counsel and said he had lost £5,000 by his advice, as it was a wrong opinion. The counsel said he had never given any opinion, and turning up his books, said he was confident of that. Being reminded that it was given during a ride the neighbours had some summer's day, near Preston, the lawyer replied, "Oh, I remember now, but that was only my travelling opinion: and to tell the truth, neighbour, my opinion is never to be relied upon unless the case appears in my fee book."

COUNSEL DISTINGUISHING HIMSELF AS AMICUS CURIÆ.

It is related that Lord Chancellor Ellesmere first gave earnest of his future eminence by interposing as *Amicus Curie*, while yet a student, when a verdict was about to

be pronounced which would have ruined a worthy old lady who kept a house of public entertainment in Smithfield. Three graziers had deposited a sum of money with her, to be returned to them on their joint application. One of them, fraudulently pretending that he had authority to receive it, induced her to give him the whole of the money, and absconded with it. The other two brought their action against her; and (as the story goes) were about to recover, when young Egerton begged permission to befriend the court, by pointing out a fatal objection which had escaped her counsel as well as my Lord Judge. Said he: "This money, by the contract, was to be returned to three, but two only sue. Where is the third? let him appear with the others: till then the money cannot be demanded from her." This turned the fortune of the day; the plaintiffs were non-suited, and our young student was from that day considered to be of great mark and likelihood.

This "traditionary story," although the law of it be unexceptionable, Lord Campbell considered an invention, as much as Miss Edgeworth's anecdote of the young barrister who, being junior in a case at *nisi prius* to try the validity of a will of personal property, when it came to his turn to address the jury, made his fortune by bringing out an objection which he had carefully concealed from his leader. But the fair writer had an undoubted right to dispense both with the forms of legal process and with professional etiquette.—2 Camp. Lives of Chanc., 175.

COUNSEL MAKING THINGS TOO LONG.

A counsel in making a motion to enter a *nolle prosequi*, on the last day of term, pronounced *prosequi* long in the middle syllable. Baron Alderson, the presiding judge, addressed the counsel: "Pray, sir, consider that this is the last day of term, and don't make things unnecessarily long."

COURT GIVING TIME TO PAY

In a case before Lord Chancellor Sir Thomas More, a poor woman was claiming a sum of money from a

gentleman defendant, who had grievously wronged her. When a decree against him seemed inevitable, the defendant said, "At least I hope your lordship will grant me a long day to pay it." The chancellor said, "I will grant you till Monday next, which is St. Barnabas' Day. It is the longest in the year. If you do not pay the money to the plaintiff on that day, I will commit you to the Fleet prison."

YOUR LORDSHIP'S PLEASURE TO ADJOURN.

Mr. Preston once argued a long and dreary case of real property law. Having not yet exhausted the Year Books when the shades of evening were closing upon him, he applied to know when it would be their lordship's pleasure to hear the remainder of his argument. Lord Ellenborough said, "Mr. Preston, we are bound to hear you out, and I hope we shall do so on Friday; but alas! pleasure has been long out of the question." Another tiresome conveyancer having, towards the end of Easter Term, occupied the court a whole day about "the merger of a term," the Chief Justice said to him, "I am afraid, sir, the term, although a long one, will merge in your argument."

AN ADVOCATE WITH A LONG NOSE.

Serjeant Prime was described in 'Miss Hawkins' "Anecdotes" as famous for his long nose. One day he was thrown from his horse, and a countryman coming up looked earnestly at him as he helped him to rise, and inquired if he was not hurt. On being answered in the negative, the fellow grinned, and said, "Then your ploughshare has saved you."

COUNSEL LAYING TRAPS FOR JUDGES.

Lord Chief Justice North, according to his brother Roger, "was very good at waylaying and disappointing the craft of counsel; for he, as they say, had been in the oven himself, and knew where to look for the pasty. Serjeant Maynard was a very able practiser, and used

to lay traps for the judges, and very cunning ones; for, if he discerned that he was observed, he straight gave it up, and contended not upon a fallacy, which he foresaw would be resolved. Sir W. Jones sometimes came before his lordship at the *nisi prius*, and used art enough, and was very angry when it did not succeed. As, for instance, by such forms as these: 'If, my lord, we prove so and so, then so and so, etc.,' and after that wait for the judge's answer. If the judge said, 'Aye, if you prove that, indeed, then, etc.,' the lawyer concluded, the jury was prepared so far. And if in the course of his evidence he could charm them to think he had proved that matter, although not sufficiently, he carried the cause; at least in the proceeding he so entangled the judge that he could scarce get clear. His lordship in such cases always declined answering anything, but said only: "Call the witnesses and prove what you can. I will tell you what I think when you have done so, and not before."

A POPULAR LEADING COUNSEL.

Chief Justice Saunders, when on the bench and at the bar, lodged at a tailor's house. Roger North says that he "was a fetid mass, that offended his neighbours at the bar in the sharpest degree. Yet none had more lively parts than he. Wit and repartee in an affected rusticity were natural to him. He was ever ready and never at a loss; and none came so near as he to be a match for Serjeant Maynard. His great dexterity was in the art of special pleading, and he would lay snares that often caught his superiors, who were not aware of his traps. And he was so fond of success for his clients, that rather than fail he would set the court hard with a trick, for which he met sometimes with a reprimand, which he would wittily ward off, so that no one was much offended with him. Sir M. Hale, it is true, could not bear his irregularities. He had a goodness of nature and disposition in so great a degree, that he may be deservedly styled a philanthrope. He was a very Silenus to the boys, as in this place I may term the students of the law, to make them merry whenever they

had a mind to it. In the Temple he seldom moved without a parcel of youths hanging about him, and he merry and jesting with them."

AN EMINENT COUNSEL'S MENTAL AND PHYSICAL PECULIARITIES.

Mr. Dunning and Mr. Murphy were great friends. The latter said that if there was a natural logician, it was Mr. Dunning. When he was in his happiest mood, a speech of his that took only half an hour would embrace all the arguments contained in his opponent's speech of two hours. But yet it required the utmost attention to follow him. His mind laboured. He had all the while a movement of his head, a grinding of his lower jaw, and a certain singular cast of countenance. There was besides a huskiness in his throat which constantly moved him to endeavor to clear it. This was first produced under a mental excitement; but afterwards became a habit, whenever his subject commanded any extraordinary exertion. Soon after he was made Lord Ashburton, one morning he desired his servant to draw the curtains and let in the light, which she said had been done; and it was then found he had by a paralytic stroke been deprived of his eyesight without the least sensation of pain. Once, on his way from the west, he met by appointment at an inn his old friend Wallace, late attorney-general; both were in a dying state, and knew it; and they took a final parting on that occasion, both dying within a few months afterwards.

A DRUNKEN ADVOCATE LAID OUT FOR DEAD.

Mr. Doddridge, an eminent American advocate, had given himself to intoxication. One day he was suddenly seized with an apoplexy, palsy, catalepsy, or some disease of that nature, and the powers of life seemed entirely suspended. The physicians declared him dead, his wife supposed him dead, and the persons in the house proceeded to lay out his corpse. During all this time, as he said afterwards, he was perfectly in his senses, heard all

that was said, but was totally unable to move a muscle, or to make the slightest exertion. While these things were going on, his wife thought she perceived a slight motion in one of his legs, the knee being drawn up. She supposed it an involuntary muscular motion, but being struck by the circumstance, she raised his head high on the pillow, rubbed him with brandy, and soon perceived signs of returning life. He slowly revived, and in a few weeks resumed his practice.—Judge Story's Life.

KEEPING A SEAT IN COURT FOR AN ABSENT COUNSEL.

John Manningham, in his Diary, says, "Mr. Prideaux, a great practiser in the Exchequer, and one that usurpes upon a place certaine at the bar, left his man one day to keep his place for him; but Lancaster, of Gray's Inn, coming in the meantime, would needs have the place though the man had kept it. 'For,' said Lancaster, 'knowest thou not that I believe nothing but the real presence'—meaning that he was a papist—and 'besides could not think it to be *corpus meum* except Mr. Prideaux himself were there.'"

ONE COUNSEL CUTTING ANOTHER.

Jekyll was asked why he no longer spoke to a lawyer of the name of Peat. Jekyll said, "I choose to give up his acquaintance. I have common of turbary, and have a right to cut *peat*!"

COUNSEL DROPPING HIS H'S.

A barrister who notoriously disregarded the letter H, was making a motion in the Court of Exchequer one day, and spoke of "'igh-bailiff." Baron Alderson said, "I have often heard of a bum-bailiff, but never heard of an eye-bailiff before."

On another occasion, a leading counsel, who was notorious for his cockney dialect, had been arguing at great length, when his junior rose and said, "My lords, considering the length of my learned leader's address, I will not weary the court with any remarks except only to add the H's!"

COUNSEL'S YORKSHIRE DIALECT.

There was an old bar joke about Tom Barrow moving with his Yorkshire dialect for a rule to *shoe cows* (show cause), and Justice Lawrence answering, "Mr. Barrow, we shoe horses in this country, not cows."

A LAWYER TOO FREE WITH HIS BARBER.

In 1710, Hearne, the antiquary, relates this incident: "A barrister went to one Mr. Tonson, a barber's, to have some superfluous hairs taken off, and the barber (according to the usual custom of those people) entering into the subject of the present addresses, the barrister was so imprudent as to say that the hereditary right was in the Prince of Wales (or the Pretender), which put the barber into a ferment, and he was seconded by his wife, both of them maintaining with great zeal, in opposition to the lawyer, that the Queen's was the hereditary title, and that not a parliamentary one. After the lawyer left them, Tonson makes information against him, and he was forced to do penance, but was dismissed at last, though not without considerable damages, which may be a warning to honest men not to enter into topics of this nature with barbers!"

THE LAWYER AND THE ARTIST.

Alonzo Cano, a Spanish sculptor, being employed by a lawyer of Grenada to make a statue of St. Antonio de Padua, and having mentioned how much it would cost, the lawyer began to reckon how many pistoles *per* day the artist had earned. "You have," said he, "been five-and-twenty days carving this statue, and your exorbitant demand makes you charge the rate of four pistoles *per* day, while I, who am your superior in a profession, do not make half your profits by my talents." "Wretch!" exclaimed the artist: "do you talk to me of your talents? I have been five-and-twenty years learning to make this statue in five-and-twenty days." So saying, he dashed it on the pavement.

THE RISING BARRISTER AND THEATRICAL MANAGER
DINING TOGETHER.

Colman junior says: "My father often met Lord, then Mr., Erskine, in the street and invited him to dinner on the same day. On these occasions Mr. Erskine was then young at the bar, flushed with success and enthusiastic in his profession. He would therefore repeat his speeches in each particular case. This I thought dull enough. But when my father observed that the arguments were unanswerable, 'By no means, my dear sir,' would Erskine say: 'had I been counsel for A. instead of B., you shall hear what I would have advanced on the other side.' Then we did hear, and I wished him at the *forum*! No two companions could have been worse coupled than Lord Erskine and my father, for the lawyer delighted in talking of himself and the bar, and the manager of himself and the theatre. Erskine was a gifted man, and, what is better, a good man. In the early part of his career he was considered a great man, but, as John Moody says of Sir Francis Wronghead, 'he could no' hawld it.'"—Peake's Colman Family.

THE BARRISTER'S HORSE THAT WOULD NOT GO CIRCUIT.

Lord Alvanley, Chief Justice, when presiding at a trial of a horse cause, in 1804, told the following story to the counsel and jury: "Some years ago, an action was brought by a gentleman at the bar respecting a horse which he had bought to go the circuit upon. The horse was taken home, and his servant mounted him to show his paces. When he was on the animal's back he would not stir a step; he tried to turn him round and round, but he was determined not to go the circuit. The horse dealer was informed of the animal's obstinacy, and asked by the purchaser how he came to sell him such a horse. 'Well,' said the dealer, 'it can't be helped; give me back the horse, allow me five pounds, and we'll settle the affair.' The barrister refused, and advised him to send the horse to be broke in by a *rough rider*. 'Rough rider!' said the dealer, 'he has been to rough riders enough!'

‘ How came you to sell me a horse that would not go?’ rejoined the barrister. The dealer answered, “ I sold you a horse warranted sound, and sound he is; but as to his going, I never thought he would go.’ ”

OUR OWN OLD HORSE CAREERING ON CIRCUIT.

When Sir Elijah Impey was a barrister, and rode the western circuit, being second to Dunning in fame, he used to take the same nag, and was vain of his horsemanship. This nag would come at his call, and follow him about like a dog. The horse was as well known as his rider, and the old people all along the line, for half a century afterwards, used to tell to the youngsters how Lawyer Impey’s horse would follow him into the town, and even walk after him into the inn, where some of the great lawyers would be sitting, with a solemnity which made them all roar with laughter.

Sir Elijah was appointed Chief Justice at Calcutta, and being a schoolfellow of Warren Hastings, and having incurred the enmity of Sir P. Francis (Junius), was recalled for alleged illegal conduct, which he satisfactorily explained; but he did not return to India, and lived a country life in England, and his favourite dog, Hector, died in grief a day or two after his master.

A COUNSEL WHO COULD NEITHER WRITE NOR SPEAK.

The King was reported to have inquired as to the fittest person for judge in a certain vacancy caused by Vice-Chancellor Hart being made Lord Chancellor of Ireland, and His Majesty was told that the soundest lawyer practising in any of the courts was a gentleman who unfortunately could neither write, nor walk, nor speak. This was said in allusion to Mr. John Bell’s peculiar handwriting, his lameness, and his northern accent. Sir L. Shadwell was appointed on that occasion, on account of his politics being suitable.

A PROSING COUNSEL FALSE IN HIS QUANTITIES.

A Chancery counsel, who had not been a double first class man at Oxford, in the course of a long and dry argument, quoted the legal maxim—*expressio unius est exclusio*

alterius,—and he pronounced the *i* in *unius* as short instead of long. This roused Lord Justice Knight Bruce from a half slumber into which he had been lulled, and he at once exclaimed, “*Unyus!* Mr. ——— ? We always pronounced that *unius* at school.” “Oh yes, my lord,” replied Mr. ———, “but some of the poets use it short for the sake of the metre.” “You forget, Mr. ———,” rejoined the judge, “that we are *prosing* here.”

A COUNSEL ALWAYS HUMBLY CONCEIVING.

Littleton Powys, a judge of the Queen’s Bench, when at the bar, had small abilities, and was laughed at by his contemporaries for beginning most of his sentences with “I humbly conceive,” and interlarding his arguments with “Look, do you see.” Philip Yorke, by way of making a butt of Littleton, told a company he was about to publish a poetical version of “Coke upon Littleton,” and when pressed to give a specimen, he repeated the following verse:—

He that holdeth his lands in fee
Need neither to quake nor to shiver,
I humbly conceive; for look, do you see,
They are his and his heirs’ for ever.

A FOPPISH COUNSEL.

Mr. Justice Yates had always had a great weakness for over-dressing, and used to tell with glee that once, on returning to his chambers in full dress, he met at the door an attorney with a large bundle of papers, who asked him if he could inform him which were Mr. Yates’ chambers. He replied, “These are the chambers—I am Mr. Yates.” The attorney then eyed him from head to foot, put his papers under his arm, and, wishing him good evening, walked away. Mr. Yates never saw him or his papers again. This peculiarity for fine dress was a topic of waggery on circuit; and his contemporaries invented a story, that he and another judge had been traced to an academy where young gentlemen were taught to dance, and that one of them was found under the hand of the master, practising the steps, and the other was sitting in the stocks.

A YOUNG COUNSEL OVER-PERT.

A young counsel of great pretensions and high connections, and whose manner was rather offensive to his neighbours and to the judge, was prosecuting a thief for a petty larceny, and after much pomp and many lordly airs, while addressing the jury and calling his witnesses, sat down with a consciousness of dignity rather disproportionate to the occasion. The judge, Mr. Justice Maule, said, "Have you no more witnesses to call, sir?" "No, my lord." "Your case is closed, then?" "Certainly, my lord," answered the counsel rather indignantly. The judge began, "Then, gentlemen of the jury, you have only to acquit this prisoner, as no evidence has been given of the property in the article alleged to be stolen, and, for aught that appears, it may have been the prisoner's own." The judge did not think fit to go out of his way to assist the prosecution in so petty a case by offering to hear additional evidence, and so the prisoner was found not guilty, and discharged.

A JUNIOR COUNSEL ASTONISHED AT A DECISION AGAINST HIM.

One of the most effectual interpositions in favour of a junior was by the Scotch advocate, John Clerk, afterwards Lord Eldin. A presumptuous youth to whom he was opposed, and against whom the court decided in a peremptory manner, having declared that "he was much astonished at such a decision," there was a threat of committing him to the tolbooth for his contempt, when Clerk caused a universal laugh, in which the reverend sages of the law joined the loudest, by saying, "My lords, if my young friend had known your lordships as long as I have done, he would long have ceased to be astonished at any decision of your lordships!"

YOUNG COUNSEL COMBINING TO PUT DOWN A SENIOR.

Mr. Lockhart, the Scotch Dean of Faculty, being insolent to members of the bar, four junior advocates,

of whom Wedderburn was one, entered into a mutual engagement that one of them, who first had the opportunity, should resent the arrogance of the Dean, and publicly insult him. It was by mere accident that the opportunity occurred to Wedderburn, who certainly made good use of it. Wedderburn being opposed in the Inner House, as counsel, to Lockhart, and being called by him a "presumptuous boy," experiencing from him even more than his wonted rudeness and superciliousness, thus began: "The learned Dean has confined himself on this occasion to vituperation; I do not say that he is capable of reasoning, but if tears would have answered his purpose, I am sure tears would not have been wanting." Lockhart here started up and threatened him with vengeance. Wedderburn went on: "I care little, my lords, for what may be said or done by a man who has been disgraced in his person and dishonoured in his bed." Lord President Carnegie, on being afterwards asked why he had not sooner interfered, answered, "Because Wedderburn made all the flesh creep on my bones." But at last his lordship declared in a firm tone that "this was language unbecoming an advocate and unbecoming a gentleman." Wedderburn, now in a state of such excitement as to have lost all sense of decorum and propriety, exclaimed that "his lordship had said as a judge what he could not justify as a gentleman." The President appealed to his brethren as to what was fit to be done, who unanimously resolved that Mr. Wedderburn should retract his words and make an humble apology, on pain of deprivation. All of a sudden, Wedderburn seemed to have subdued his passion and put on an air of deliberate coolness, when, instead of the expected retraction and apology, he stripped off his gown, and holding it in his hand before the judges, he said, "My lords, I neither retract nor apologize; but I will save you the trouble of deprivation. There is my gown, and I will never wear it more; *virtute me involvo*." He then coolly laid his gown upon the bar, made a low bow to the judges, and before they had recovered from their amazement, he left the court, which he never again entered.—6 Camp. Chanc., 48.

A DOMINEERING LEADER HUMILIATED AT LAST.

Lord Campbell, in his Autobiography, says: "Gibbs was at this time (1808) Attorney-General, and tyrannized over Westminster Hall. He had the greatest reputation of any barrister in my time, a reputation by no means sustained on the bench, as a puisne judge, as Chief Baron, and Chief Justice of the Common Pleas. He was the most conceited man of the age, and he was at no pains to conceal his opinion of his own superiority in intellect and acquirements. Having paid an ironical compliment to Garrow, who said, 'This is all very well as a sneer,' he rejoined, 'I meant it as a sneer.' Garrow, feeling himself so vulnerable from want of law, was afraid of him. Allan Park, next in business, licked his foot, and no one else for a long time ventured to resent his arrogance. At length Topping, a rough Yorkshireman, who had lately obtained a silk gown on the northern circuit, threw a stone at this Goliath, and laid him prostrate. Topping being by accident in a cause against him, and treated with more than usual superciliousness, when replying, ran at full tilt, inveighed against the air of superiority which was assumed, and introduced the quotation from Shakspeare:

" He doth bestride the narrow world
Like a Colossus, and we petty men
Walk under his huge legs and peep about
To find ourselves dishonourable graves."

The sensation was very great, and all in court, from the noble Chief Justice to the crier, relished Sir Vicary's wooden looks and ghastly smiles. The attorneys, to whom he used to be intolerably insolent, rejoiced in his humiliation, and showed their gratitude by showering briefs on Topping. This 'liberator' was introduced into Parliament, and might have reached the high honours of his profession, had it not been for his intemperate habits."—1 Camp. Life, 219.

COUNSEL CITING A HIGH AUTHORITY.

Curran, in a case involving ecclesiastical law, noticing behind him a very tall and slender gentleman who had

once intended to go into the Church, but preferred the law, said he could refer his lordship to a very *high* authority behind him, who was once intended for the Church, though perhaps he was fitter for the *steeple* !

COUNSEL'S FEES.

I should be sorry to see the honorary character of fees of barristers and physicians done away with. Though it seems a shadowy distinction, I believe it to be beneficial in effect. It contributes to preserve the idea of a profession to a class which belongs to the public, in the employment and remuneration of which no law interferes ; but the citizen acts as he likes *in foro conscientiæ*.—Coleridge's Table Talk.

COUNSEL'S SPECIAL RETAINERS.

According to the etiquette of the profession, no barrister may go to plead a cause on a different circuit from that which he usually attends, except on a special retainer ; and if he wears a silk gown, he cannot take a fee less than 300 guineas. This is to prevent the unseemly scramble for business which might otherwise take place. Some say that special retainers began with Erskine ; but this is doubted. From 1783 till he left the bar, Erskine had, upon an average, twelve special retainers a year.

Serjeant Davy once had a very large brief delivered to him with a fee of two guineas only marked on the back of it. His client asked him if he had read the brief. " Yes," said the serjeant, pointing to the words on the back, " ' Mr. Serjeant Davy, *Two Guineas*.' As far as that I have read, and for the life of me I can read no farther !"

Mr. Serjeant Hill once had a case for his opinion delivered, upon which a fee of *one* guinea was paid to his clerk in his absence. The serjeant kept the fee and wrote the following opinion : " I do not answer cases for a fee of one guinea." (Signed and dated in the ordinary way.)

A CASE FOR OPINION STICKING IN THE THROAT.

A client wrote a letter to Parsons, the American advocate, stating a case, requesting his opinion upon it, and enclosing twenty dollars. After the lapse of some time, receiving no answer, he wrote a second letter, informing him of his first communication. Parsons replied that he had received both letters, had examined the case, and formed his opinion, but somehow or other "it stuck in his throat." The client understood this hint, sent him 100 dollars, and received the opinion. Twenty dollars for the legal opinion of Parsons, the greatest lawyer of his time!—Judge Story's Life.

COUNSEL TAKING HIS FEES IN SILVER AND COPPER.

When Serjeant Davy was called to account at the circuit mess for taking silver from a client, and so disgracing the profession, he replied, "I took silver because I could not get gold, but I took every farthing the fellow had in the world, and I hope you don't call that disgracing the profession."

Another serjeant was accused, once upon a time, by his brethren of the court, of having degraded their order by taking from a client a fee in copper, and on being solemnly arraigned for this offence in their common hall, it appears from the unwritten reports of the Court of Common Pleas, that he defended himself by the following plea of confession and avoidance: "I fully admit that I took a fee from the man in copper, and not one, but several, and not only fees in copper, but fees in silver; but I pledge my honour as a serjeant, that I never took a single fee from him in silver until I had got all his gold, and that I never took a fee from him in copper until I had got all his silver, and you don't call that a degradation of our order!"—2 Woolrych Serj., 632.

COUNSEL ATTENDING TO PRIVATE BUSINESS.

It is almost proverbial that a lawyer never does anything well for which he does not receive a fee. Lord Mansfield used to tell the story, that feeling this influence

once upon him, when about to attend some professional business of his own, he took some guineas out of a purse and put them in his waistcoat pocket, so as to keep up the real professional stimulus!

Sir Anthony Malone, the Irish Attorney-General, was very skilful in conveyancing, and nobody had the least doubt of the validity of his title to landed estates when it had been certified by him; so that he was generally consulted. Yet when he bought some property himself, he was so inattentive that he lost an estate worth £3,000 a year. This so annoyed him that he ordered his clerk in future to take the title-deeds of any property he bought, and to make a correct abstract, and lay this before him with a fee of five guineas properly indorsed, and which the clerk was to charge to him scrupulously. By this formality Sir Anthony felt that he could go through the papers with his usual care, and he lost no more money in this way.

THE LEARNED ARGUMENTS OF "LITTLE FROG MORGAN."

Croke's reports are usually quoted according to the reigns to which they refer—Elizabeth, James I., Charles I. A little barrister named Morgan, in arguing a case in the King's Bench, quoted so frequently from Croke Charles, Croke James, and Croke Elizabeth, that the whole bar became convulsed with laughter, and he, in consequence, obtained the *sobriquet* of "Frog Morgan." This worthy advocate was remarkable for his diminutive stature. The following anecdote has been related of him, as of many others. Before he was much known at the bar, he was beginning to open a case, when Lord Mansfield, in a tone of grave rebuke, addressed him, "Sir, it is usual for counsel when they address the court to stand up." "I am standing, my lord," screamed Frog Morgan; "I have been standing these five minutes!"

LONGS AND SHORTS AT THE BAR.

When Lord Redesdale was Lord Chancellor of Ireland, a very tall counsel, Mahaffy, was with a very little counsel,

Mr. Collis, in the same case. Mr. Collis began to argue, when the judge said, "Mr. Collis, it is usual for counsel to stand when addressing the court." "I am standing; my lord, on the bench," was the answer. His lordship said, "Oh then, Mr. Mahaffy, I must ask you to sit down till your turn comes." "I am sitting down, my lord." His lordship was confounded at this state of things.

In Scotland, an advocate named John Erskine was of very diminutive size, and used to stand on a stool when he was addressing the court; which made Henry Erskine remark, "that that was certainly one way of rising at the bar."

A COUNSELLOR'S CLERK HANGING HIMSELF.

When Mr. Justice John Williams was an eminent counsel at the bar, he went one night late into his chambers, and on going to his room, was caught by two legs hanging overhead, which turned out to be those of his clerk who had executed on himself, in the passage, the sentence *susp. per coll.* On engaging another clerk the eminent counsel, with much gravity, said, "I have one more stipulation to make with you: should you hang yourself, which you can do or not, as you think fit, pray do not hang yourself in my chambers."

COUNSEL COMPLIMENTING HIS OPPONENT.

When Lord Westbury was at the bar, he was for defendant in a case at the Rolls Court, in which a leading counsel, afterwards Lord Chancellor, was on the other side. The latter counsel, after a long and animated argument, had concluded, his voice being rather tumultuous and excited towards the end. Mr. Bethell then rose serene, effulgent, and calm, amid breathless silence, and after a suitable pause, thus began: "Now that *all this noise has ceased* I will call your honour's attention in a very few words to the point in the case, and I venture to think it scarcely requires a moment to make it self-evident." He then went on and filled up many moments in the usual way.

Counsellor Lamb was in a case against Mr. Erskine, then at the height of his reputation. The former, being timid and nervous, often prefaced his argument with an apology, and an allusion to his humility, and once added that he felt himself growing more and more timid as he grew older. Erskine could not resist retorting: "Every one knows the older a *lamb* grows the more *sheepish* he becomes."

A COUNSEL'S ELOQUENCE CALLED AN EXTINGUISHER.

Curran was describing to the jury a speech made by Serjeant Hewitt, his opponent, and said, "My learned friend's speech put me exactly in mind of a familiar utensil in domestic use, commonly called an extinguisher. It began at a point, and on it went widening and widening, until at last it fairly put the question out altogether."

COUNSEL EXCHANGING HATS.

When Chief Justice Parsons, the American judge, was a leading advocate, he was engaged in a heavy case, which gave rise to many encounters between himself and the opposing leader, Mr. Sullivan. During Parsons' harangue, Sullivan picked up Parsons' large black hat, and wrote with a piece of chalk upon it, "This is the hat of a d——d rascal." The lawyers sitting round began to titter, which called attention to the hat, and the inscription soon caught the eye of Parsons, who at once said: "May it please your honour, I crave the protection of the court. Brother Sullivan has been stealing my hat, and writing his own name upon it." This ready wit squared accounts for the time

THE COUNSEL WHO REPRESENTED THE POOR WIDOW.

Lord Cockburn, the Scotch judge, was sitting alone in the Outer House, when a very heavy case was commenced, in which there were several counsel, representing many parties. One young counsel, Mr. MacTurk, had a very squeaky voice, and was noted for some qualities that too

frequently made the court laugh. The judge seeing this junior standing as if interested, said, "Whom do you appear for, Mr. MacTurk?" That gentleman replied, with a pleasing smirk, "I'm for the widow, Mrs. Brown, my lord." The judge, who was a great master of the pathetic, turned aside and very audibly ejaculated, "The Lord help her!"

AN OBSTINATE COUNSEL.

Crosby, the Scotch advocate (the original of Counsellor Pleydell, in "Guy Mannering," and who met Dr. Johnson in the company of Boswell), when he once took up an idea, retained it most obstinately, even after there was convincing evidence against it. On occasion of the great cause of Nabob Fullerton *v.* Orangefield, where he and Boswell were on opposite sides, Crosby persisted in thinking his client, Fullerton, was right, when everybody in court was clear against him. Boswell said, "Crosby's head is like a money-box with a slit in the top of it. If once a thing has got into it, you cannot get it again but by breaking the box. We must break your head, Crosby!"

AN UNDERSTANDING BETWEEN TWO COUNSEL.

A counsel at the Chancery bar, by way of denying collusion suspected to exist between him and the counsel representing another party, having said, "My lord, I assure your lordship there is no understanding between us," Lord Chancellor Eldon observed, "I once heard a squire in the House of Commons say of himself and another squire, 'We have never, through life, had but one idea between us;' but I tremble for the suitors when I am told that two eminent practitioners at my bar have no understanding between them!" When the Welsh jurisdiction was about to be abolished, two judges were appointed, with an understanding that if it was abolished they should not be entitled to a pension; but it was said that all the others had pensions granted to them because they had been appointed "without any understanding." —Twiss's Eldon.

A CONSULTATION WITH AN EMINENT COUNSEL.

Mr. Espinasse mentions his accompanying a client one evening to Erskine's chambers. In the room into which they were shown were between thirty and forty phials, each containing a slip of geranium. When Erskine came, he said, "Espinasse, do you know how many sorts of geraniums there are?" "Not I, truly," was the reply. "There are above a hundred," said he, and then, much to the annoyance of the solicitor present, launched out into a long dissertation upon the various merits of each kind. At length he stopped and said, "Espinasse, now state the case, for I have no time to read my brief." Mr. Espinasse did so, and there the consultation ended. The anxious attorney, however, had the pleasure next morning of hearing his case admirably argued by Erskine; every point put with accuracy, and enforced with eloquence.—1 *Law and Lawyers*, 210.

A DOG ATTENDING CONSULTATIONS.

Erskine would often produce his leeches at consultation, under the name of "bottle conjurors," and argue the result of the cause according to the manner in which they swam or crawled; and a still more favourite amusement with him was to make his large Newfoundland dog, Toss, personate the judge. He had taught this animal to sit with much gravity upon a chair, with his paws placed before him on the table, and occasionally he would put a full-bottom wig on his head and a band round his neck, placing a black-letter folio before him. The clients, as we may suppose, were much startled by such exhibitions; but then was the time when he took his amusement, and rising next morning at cock-crow, he read all his briefs before the court met, and won all the verdicts.—6 *Camp. Chanc.*, 698.

When a Lord Chancellor was Attorney-General, and attended a consultation where there was considerable difference of opinion between him and his brother counsel, he delivered his opinion with unusual and misplaced energy, and ended by striking his hand on the table, say-

ing, "This, gentlemen, is my opinion." This pèremptory tone and style so nettled the solicitor, who had frequently consulted him when a young counsel, that the former sarcastically observed: "Your opinion! why I've often had your opinion for five shillings!" Mr. Attorney, with great good humour, rejoined, "Very true, and I daresay that was then its full value!"

WHY COUNSEL DRINK A POT OF PORTER.

A learned counsel (Mr. Brougham, as some say), when the judges had retired for a few minutes in the midst of his argument, in which, from their interruptions and objections, he did not seem likely to be successful, went out of court too, and on his return stated he had been drinking a pot of porter. Being asked whether he was not afraid that this beverage might dull his intellect? "That is just what I want it to do," said he, "to bring me down, if possible, to the level of their lordships' understanding."

Another story to the same effect is told of Sir John Millicent, the judge, who, though a clever lawyer, was too fond of his cup. He used to explain that there was nothing for it but to drink himself down to the capacity of his colleagues.

A LEADER WHO DREW THE LONG BOW.

Lord Campbell, in his Autobiography, says: "Our leader, Jervis, was a very gentlemanly man in his manners and very honourably inclined, but famous for drawing the long bow. The stories he told were, and probably still are by tradition, a source of amusement to the Oxford circuit. As a specimen, he said 'he kept up a flock of above 1,000 turkeys at his place in Kent, which he fattened on grasshoppers.' That one morning he there saw twenty jays sitting on a tree, and was going to fire at them, when one of them said: 'Good morning to you, Mr. Jervis; good morning, Tom Jervis,' and he allowed them all to fly away unhurt. I once mentioned that I had been reading the Iliad, with the help of an occasional

peep at the Latin translation; and he said: 'I make it a rule to read through the whole of Homer's works once a year'—the fact being, that he had never been at the university and did not know a word of Greek. We proposed that his epitaph should be, 'Here ceaseth to lie Thomas Jervis!'"—*I L. Camp. Life*, 250.

COUNSEL CALLED ON FOR HIS AUTHORITY.

Serjeant Wilkins, defending a prisoner, said, "Drink has upon some an elevating, upon others a depressing effect. Indeed, there is a report, as we all know, that an eminent judge, when at the bar, was obliged to resort to heavy wet in a morning, to reduce himself to the level of the judges." Lord Denman, the judge, who had no love to Wilkins, bridled up instantly. His voice trembled with indignation as he uttered the words: "Where is the report, sir? Where is it?" There was a death-like silence. Wilkins calmly turned round to the judge and said: "It was burnt, my lord, in the Temple fire." The effect of this was considerable, and it was a long time before order could be restored, but Lord Denman was one of the first to acknowledge the wit of the answer.—*2 Woolrych Serj.*, 876.

SERJEANT BUZFUZ MISSING A POINT.

Adolphus, the criminal lawyer, once said to Dickens, on meeting him at Barham's, "I have often longed to tell you of a hit Serjeant Buzfuz missed in the trial of *Bardell v. Pickwick*. In the celebrated speech of Serjeant Buzfuz he reads Pickwick's letter:—

" 'GARRAWAY'S, 12 o'clock.

" 'Dear Mrs. B., chops and tomato sauce,

" 'Yours, PICKWICK.

" 'Gentlemen,' says the learned serjeant, 'what does this mean?' etc., etc. Now here Buzfuz missed his triumphant point, which was this, 'Gentlemen, I need not tell you the popular name for tomato is the love-apple! Is it not clear what this base deceiver meant? The outpouring of love and tender feelings implied by tomato sauce cannot be misunderstood.'"—*Adolphus' Mem.*, 246.

COUNSEL DRAWN ON TO PRODUCE A DOCUMENT.

The Duke of Wellington said of Scarlett, that when he was addressing a jury there were thirteen jurymen. Scarlett was not famed for eloquence, but for consummate tact and ease. Justice Patteson told a story of Scarlett's dexterity in the conduct of a cause. Scarlett and Patteson were on one side, and Brougham and Parke on the other. Scarlett told Patteson that he would manage to make Brougham produce in evidence a written instrument, the withholding of which, on account of the insufficiency of the stamp, was essential for the success of his case. On Patteson observing that, even if he could throw Brougham off his guard, he could not be so successful with Parke, Scarlett said he would try. He then conducted the case with such consummate dexterity, pretending to disbelieve the existence of the document referred to, that Brougham and Parke resolved to produce it; not being aware that Scarlett had any suspicion of its invalidity. Patteson described the extreme surprise and mortification of Scarlett on its production by Brougham, with a flourish of trumpets about "the non-existence of which document his learned friend had reckoned on so confidently." The way in which Scarlett asked to look at the instrument, and his assumed astonishment at the discovery of the insufficiency of the stamp, were a masterpiece of acting.

AN IRISH COUNSEL INVENTING AN ADJECTIVE.

Mr. Egan, an Irish barrister, in addressing a jury, having exhausted every ordinary epithet of the English language sounding in abuse, stopped for a word, and then added, "this *naufraigeous ruffian*." When afterwards asked by his friends the meaning of this word, he confessed he did not know, but said he thought it *sounded well*.

TICKLING A CLIENT.

The Scotch advocate, Henry Erskine, was defending a client, a lady of the name of Tickell, before a Scotch judge, who was an intimate friend; and Erskine being a humourist, he chose to commence his address to the judge

in these terms: "Tickell, my client, my lord." The judge at once interrupted him by saying: "Tickle her yourself, Harry; you are as able to do it as I am!"

A YOUNG COUNSEL UNSKILLED IN INDORSEMENTS.

A young barrister newly called to the bar, and not yet familiar with the contractions usual in legal documents, received a brief with this indorsement: "Nokes *v.* Sykes. Instructions to move for a common to examine witnesses." The young counsel, with great confidence, humbly moved their lordships for a common to examine witnesses. "A what, sir?" asked the Chief Justice. "I humbly move for a common to examine witnesses." "Pray sir," said the chief, "are your witnesses numerous?" "Yes, my lord." "Then take Salisbury Plain!" The youth did not know that the word intended was *commission* to examine witnesses: and hence the Chief Justice made a fair enough joke out of it.

It is also said that a counsel, whose mastery of the Latin language was doubted, once moved the court of King's Bench for two *mandami*, which greatly astonished their lordships, who had hitherto been quite contented with one *mandamus* at a time.

SETTING UP A DEFENCE OF ROBBERY BY PRESCRIPTION.

Justice Manwood said, "When I was servant to Sir James Hales, a justice of the Common Pleas, one of his servants was robbed at Gadshill, near Gravesend, Kent, and he sued the men of the Hundred upon an old statute of Winton, for the loss of the goods. Serjeant Harris was counsel for the inhabitants, and pleaded for them, that time out of mind felons had used to rob at Gadshill, and hence the Hundred was exempt by immemorial prescription. But the inhabitants lost the judgment notwithstanding this novel plea.

A COUNSEL ARGUING DROLLY.

A Scotch counsel named Rae was one day arguing a case with much extravagant drollery. Mr. Swinton said of him, "He has been to-day not only Rae, but *outré*."

COUNSEL ILLUSTRATING THE FOLLY OF CREDULITY.

Serjeant Parry, in a case where extraordinary credulity and knavery were apparent, explained the situation to the jury by this apologue. An Eastern sovereign was waited on by some merchants who exhibited for sale several fine horses. The king admired them, bought them, and gave the merchants a lac of rupees to purchase more of the same and bring them. Afterwards, in a sportive humour, the king ordered his vizier to make out a list of all the fools in his dominions. He did so, and put his Majesty's name at the head of them. The king asked why, when the vizier replied, "Because you entrusted a lac of rupees to men you did not know, and who will never come back again." "Ay, but suppose they should come back again?" "Then I shall erase your Majesty's name and insert *theirs*."

COMMON SENSE THE SAME IN ALL LANGUAGES.

Mr. John Clerk, an eminent Scotch counsel, was arguing at the bar of the House of Lords in a Scotch appeal, and turning his periods in the broadest Scotch, and after clinching a point, added, "That's the whole thing in plain English, ma lorrdds." Upon which Lord Eldon replied: "You mean in plain Scotch, Mr. Clerk." The advocate readily retorted, "Nae maitter! in plain common sense, ma lords, and that's the same in a' languages, we ken weel eneuch."

COUNSEL MISTAKING HIS SIDE.

Lord Eldon said, "I was once junior to Mr. Dunning, who began his argument and appeared to me to be reasoning very powerfully against our client. Waiting till I was quite convinced that he had mistaken for what party he was retained, I then touched his arm, and upon his turning his head towards me, I whispered to him that he must have misunderstood for whom he was employed, as he was reasoning against our client. He gave me a very rough and rude reprimand for not having sooner set him right, and then proceeded to state that what he addressed to the court was all that could be stated against

his client, and that he had put the case as unfavourably as possibly against him in order that the court might see how very satisfactorily the case against him could be answered. And, accordingly, Dunning very powerfully answered what he had before stated."—Twiss, *Life of L. Eldon*.

COUNSEL FORGETTING WHICH SIDE HE IS ON.

One day, in 1788, in court, Mr. Brown, a counsel, had been enlarging in support of a petition before the Master of the Rolls, and was followed by another counsel on the same side. Mr. Brown was horrified on discovering that he had mistaken his side, and asked the judge's pardon, and said he had instructions to oppose the petition. The judge goodnaturedly begged Mr. Brown to proceed, observing that he knew no counsel who was better able to answer his own arguments than himself.

The same circumstance happened once to Sugden, and to John Clerk, a Scotch advocate.

A POMPOUS COUNSEL FALLING OVER A STILE.

Andrew Balfour, one of the commissaries of Edinburgh, was a man of much pomposity of manner, appearance, and expression. Harry Erskine met him one morning coming into the court, and observing that he was lame, said to him, "What has happened, commissary? I am sorry to see you limping." "I was visiting my brother in Fife," answered the commissary, "and I fell over his stile, and had nearly broken my leg." "'Twas lucky, commissary," replied Harry, "it was not your own style, for you would then have broken your neck."—Kay's *Portraits*.

BORING IS MATTER OF SCIENCE.

Mr. Caldecot, a great sessions lawyer, but known as a dreadful bore, was arguing in the King's Bench a question upon the ratability of certain lime quarries to the relief of the poor, and contended, at enormous length, that, "like lead and copper mines, they were not ratable, because the limestone in them could only be

reached by deep boring, which was matter of science." Lord Ellenborough, C. J., said, "You will hardly succeed in convincing us, sir, that every species of boring is matter of science."

THE PEERS CONSULTING ON A POINT RAISED BY COUNSEL.

Serjeant Whitaker was conducting an examination at the bar of the House of Lords in a divorce case, and an objection being taken to some question, counsel were ordered to withdraw, and there was a deliberation of two hours. Nothing was resolved on, and when he was re-admitted, he was requested to put the question again. With great cleverness, he answered, "Upon my word, my lords, it is so long since I put the first question that I entirely forget it, but with your leave, I'll now put another."—2 Woolrych Serj., 564.

COUNSEL CHALLENGED TO FIGHT.

Once Serjeant Davy was called out by an infuriated party whom he slandered, and the challenger actually went on to Dorchester, and knocking at a very early hour at the door of the house where the lawyer lodged, upon its being opened, he walked into the house, and walked from room to room till he found himself in the room where the lawyer was in bed. He drew open the curtains, and said that the lawyer must well know what his errand was—that he came to demand satisfaction—that he too well knew that the person upon whom that demand was made was unwilling to comply with it; but that satisfaction he must and would have. The serjeant began to apologise. The gentleman said he was not to be appeased by apologies or words. His honour had been tarnished, and the satisfaction which one gentleman owed to another gentleman whom he had calumniated, he came to demand and to insist upon. "Well," said the serjeant, "surely you don't mean to fall upon a naked man unarmed and in bed?" "Oh no, sir!" said the gentleman; "you can't but know in what way this sort of business is conducted between gentleman and gentleman!" "Very right," says the serjeant; "then if you give me your honour that you

don't mean to fall upon me naked and unarmed in bed, I give you mine that I will not get out of bed till you are gone out of town, and I am in no danger of seeing you again."—2 Woolrych Serj., 628.

A SERJEANT WHO HAD BEEN AN ACCOUCHEUR.

A learned serjeant had been bred an apothecary and accoucheur, and afterwards became a noted leader of the bar. Young Murphy, when beginning at the bar, had the curiosity to take down a speech of the serjeant's, which consisted of little else than constant repetitions of "gemmen of the jury." This speech he afterwards showed to Chief Baron Skinner, who, instead of laughing at it with the rest of the company, very gravely remarked "that he thought the serjeant very ill treated, for though it was true he often delivered other people, it was never understood that he could *deliver* himself."

A JUDGE'S SON WANDERING FROM THE POINT.

Justice Willes, the son of Chief Justice Willes, had been solicitor-general, and was made a justice of the King's Bench, but was always supposed to be of slender intellect. When at the bar and arguing a case, the court several times checked him for wandering from the point, till at last he said testily, "I wish you would remember that I am the son of a chief justice." Upon this, old Justice Gould naïvely answered, "Oh, we remember your father, but he was a *sensible* man!"

"HAVE YOU HEARD OF MY SON'S ROBBERY?"

A tiresome friend met Parsons, the Irish barrister, one day, and said to him, "Mr. Parsons, have you heard of my son's robbery?" "No," said Parsons; "good gracious!—whom has he robbed?"

A NOISE OUTSIDE THE COURT.

Parsons, the Irish barrister, was in a case on circuit before Lord Norbury; and when his lordship was speaking, an ass outside brayed so loudly that no one could

hear his lordship. He exclaimed testily, "Do stop that noise!" Parsons said with much gravity, "My lord, there is a great echo in the court!"

WHAT IS A PERSONAL NARRATIVE.

Lord Wellesley's aid-de-camp, Keppel, wrote a book of travels, and called it his personal narrative. Lord Wellesley was quizzing it, and said to Lord Plunket, "Personal narrative—what is a personal narrative, Lord Plunket? What should you say a personal narrative meant?" Plunket answered: "My lord, you know we lawyers always understand *personal* as contradistinguished from *real*."

LAWYERS AS VOLUNTEERS IN THE "DEVIL'S OWN."

Lord Keeper Littleton, in 1645, proposed to raise a volunteer corps, which he himself was to command, to consist of lawyers and gentlemen of the Inns of Court and Chancery, officers of the different courts of justice, and all who were willing to draw a weapon for Church and King under the auspices of the Lord Keeper. The offer was accepted, and a commission was granted to him. According to a statement by the editor of his "Reports," the Lord Keeper's military zeal was felt by all members of the profession of the law then at Oxford, the judges included. "He was colonel of a foot regiment, in which were listed all the judges, lawyers, and officers belonging to the general courts of justice." This reminded Lord Campbell of the gallant corps in which he himself served in his youth, "the B.I.C.A.," or "Bloomsbury and Inns of Court Association," consisting of barristers, attorneys, law students, and clerks, raised to repel the invasion threatened by Napoleon; but none of the reverend sages of the law served in this or the rival legal corps, named the "Temple Light Infantry," or "The Devil's Own," commanded by Erskine, still at the bar. Lord Chancellor Eldon doubted the expediency of mixing in the ranks, and did not aspire to be an officer. Law, the Attorney-General, was in the awkward squad. Lord Keeper Littleton had, therefore, the glory of being

recorded as the last successor of Turketel, Thomas-à-Becket, and the Earl of Salisbury, who ever carried arms while head of the law.—2 Camp. Lives of Chanc., 604.

LAWYERS AS VOLUNTEERS.

In 1803, out of the 300,000 volunteers enrolled and disciplined, the lawyers in the metropolis raised two regiments—the “B.I.C.A.,” or “Bloomsbury and Inns of Court Association,” and the “Temple Corps,” generally called “The Devil’s Own.” The command of the latter was conferred upon Erskine. Lord Campbell says, as to this: “Having myself served in the ranks of the former, I am not able, from personal observation, to criticise his military prowess; but I well remember we heard many stories of the blunders which he committed, and we thought ourselves lucky to be under the orders of Lieutenant-Colonel Cox, a warlike Master in Chancery. Law, then the Attorney-General, afterwards Lord Chief Justice Ellenborough, was reported to be a fair specimen of them; for, even with the help of chalk, he never could be taught the difference between marching with his right or left foot foremost; and all the time he was in the service he continued in the awkward squad. There were likewise a good many attorneys belonging to us, who brought down many jests upon us; among others, that upon the word given, ‘prepare to charge,’ they all pulled out pen, ink, and paper, and being ordered to ‘charge,’ they wrote down 6s. 8*d.* or 13s. 4*d.* The soul of our corps was the adjutant, my poor friend Will Harrison, who with us could talk of nothing but battles, and seemed to think himself as great a military genius as Napoleon, although he talked much law at regimental messes, which he was fond of dining at; so that it was said he was ‘a general among lawyers, and a lawyer among generals.’—6 Camp. Chanc., 547.

LAWYERS RESIGNING AS VOLUNTEERS.

Erskine once came before the public with a military opinion. Other civilians, as well as the lawyers, were weary of military manœuvres when the danger of invasion had

passed by, and longed to retire from the volunteers; but the government wished to keep up the force on its present footing, and insisted they were bound to serve during the war. The Attorney and Solicitor-General having given an opinion to this effect, Erskine was consulted, and thus expressed himself respecting the nature and extent of the engagement of volunteers: "If the term volunteer is supposed to be satisfied by the original spontaneousness of the enrolment, leaving him afterwards indefinitely bound, then every enlisted soldier must equally be considered to be a volunteer, and, with difference of receiving money, and the local extent of service excepted, would be upon an equal footing, both as to merit and independence. Such a doctrine appears to me to be equally unjust and impolitic. Unjust, because for the volunteer's engagement there is no consideration but the sense of honour and duty, the reward of which is sullied if the service does not continue to be voluntary. Impolitic, because it is overlooking a motive of action infinitely more powerful than the force of any human authority, to take no account of that invincible sensibility in the mind of man for the opinion of his fellow-creatures." He further examined the statutes upon the subject, and came to the clear conclusion that any member of a volunteer corps might resign at pleasure; although, while he continued to serve, he was subject to military law. The conflicting opinions were published in all the newspapers, and caused general confusion, till the question was regularly brought before the Court of King's Bench, of which Lord Ellenborough was now the distinguished head. The case having been elaborately argued by Percival, the Attorney-General, on the one side, and Erskine on the other, the judges unanimously determined in favour of the power of resignation; and the champion of it was extolled as a great lawyer as well as advocate, if not as a great military commander.—6 Camp. Chanc., 549.

LAWYER BARGAINING FOR FIXTURES.

Sir Fletcher Norton, Attorney-General in 1764 (afterwards the Speaker), and whose mother lived in a small house in Preston, resolved to buy a better house for her,

and bought one. And in that house were two pictures, which the proprietor valued at £60. The Attorney-General insisted on having them for nothing, as fixtures. The vendor would not agree to this, and so the bargain went off.—Walpole's Letters.

“THE CASE IS ALTERED, QUOTH PLOWDEN.”

This professional proverb arose out of the following incident. One day whilst residing on one of his estates, some persons came to Serjeant Plowden, with no good will, to inform him that mass was about to be celebrated in a certain house in the neighbourhood: he might wish to assist at it. Plowden hastened to the place, and was seen to make the sign of the cross and use his prayer-book. For this offence he was shortly afterwards summoned. He was suspicious of foul play somewhere, and cross-examined the witnesses, and amongst others the priest who had officiated. He demanded of this man whether he would swear that he was a priest. To this question the answer was in the negative. Wherefore Plowden exclaimed, “The case is altered: no priest, no man; no man, no violation of the law.” It became a common proverb afterwards to say, when a case broke down on the facts, “The case is altered, quoth Plowden.”—*I Woolrych's Serj.*, 117.

A PHYSICIAN SUFFERING A RECOVERY.

A physician who had a thorough hatred of lawyers, on whom he vented his bile, was in company with a barrister, when he reproached the latter for being in a profession which used phrases that were utterly unintelligible. “For example,” said he, “I never could understand what you lawyers mean by docking an entail.” “That is very likely,” answered the lawyer; “but I will explain it to you: it is doing what you doctors never consent to, suffering a recovery.”

COMMITTING A CAUSE TO A MASTER.

Lord Bacon has recorded two of Lord Chancellor Ellesmere's jests, which, although they appear among

many of infinite value in what Lord Macaulay considers "the best jest-book in the world," makes us rather rejoice that no more of them have been preserved. They were wont to call "referring to the Master of Chancery," *committing*. My Lord Keeper Egerton, when he was Master of the Rolls, was wont to ask, "What the cause had done, that it should be committed?"

ASKING A JUDGE TO SIGN AN ORDER.

My Lord Chancellor Ellesmere, when he had read a petition which he disliked, would say, "What, would you have my hand to this now?" And the party answering "Yes," he would say farther: "Well, you shall; nay, you shall have both my hands to it." And so would, with both his hands, tear it in pieces.—Bac. Apophth.

A COUNSEL SEEKING AN APPOINTMENT.

A Welsh judge, famous both for his neglect of personal cleanliness and his insatiable desire for some good place, was once addressed by Mr. Jekyll: "My dear sir, as you have asked the minister for everything else, why have you never asked him for a piece of soap and a nail-brush?"

A little fellow at the bar, who had scarcely any business, was one day endeavouring to get the judge to attend to a motion he wanted to make, but it was no use; he never could catch the judge's eye. Jekyll, looking at the bench, said in an inimitable tone, "*De minimis non curat lex.*"

THE BAR AND ITS ETIQUETTE.

Professional etiquette has been carried to a ridiculous extent at the English bar,—as in forbidding a barrister on the circuit to dine with an attorney, or to dance with an attorney's daughter; whereas the attorney is often a gentleman as well born, as well educated, and as well mannered as the barrister. But the respectability of the order of the bar, and, consequently, the public good, peremptorily require that all solicitations of business by barristers should be forbidden, and that all indirect

means to obtain it should be considered discreditable. There is a useful surveillance exercised on the circuits by means of the grand court, whereby such practices are repressed.—6 Camp. Chanc., 56.

INVITING A JUDGE ON CIRCUIT TO DINNER.

An old author relates the following anecdote, to illustrate the purity and good humour of Chief Justice Markham. "A lady would traverse a suit of law against the will of her husband, who was contented to buy his quiet by giving her her will therein, though otherwise persuaded in his judgment the cause would go against her. This lady, dwelling in the shire town, invited the judge to dinner, and (though thrifty enough herself) treated him with sumptuous entertainment. Dinner being done, and the cause being called, the judge clearly gave it against her. And when, in passion, she vowed never to invite a judge again, 'Nay, wife,' said he, 'vow never to invite a just judge any more.'"

JUDGES ON CIRCUIT OPENING THE ASSIZES.

The judges now-a-days would be surprised to receive such circulars as were usually sent to them by the Lord Chancellors, and even so late as by Lord Cowper, Lord Chancellor in 1716. They are now left to their own discretion as to the topics they will enlarge upon, and are no longer lectured and advised as to their duties. It being contrary to etiquette for barristers to be present, so that "the sages of the law" may have greater license, and may, without scruple, repeat the same fine sentences in every county on the circuit, Lord Campbell said that he himself never heard any of these discourses, but he had been obliged in the House of Commons to censure some of them. Addresses to the grand jury are best employed in commenting upon the cases in the calendar which are coming on for trial. Observations are sometimes made on the general state of the country; but judges now usually altogether eschew party politics and questions of vexed political economy. A friend of Lord Campbell, who was foreman of the grand jury in a northern county, told him that having heard from a

judge of assize a panegyric on the corn laws, he had a great inclination to answer him; and a juryman who hears political nonsense from the bench, was, according to Lord Campbell, justified in refuting it on the spot.—4 Camp. Chanc., 361.

JUDGES DINING ON CIRCUIT.

Baron Graham related to Lord Campbell the following anecdote, to show that he had more firmness than Judge Hale. "There was a baronet of ancient family with whom the judges going the Western Circuit had always been accustomed to dine. When I went that circuit, I heard that a cause in which he was plaintiff was coming on for trial; but the usual invitation was received, and, lest the people might suppose that judges could be influenced by a dinner, I accepted it. The defendant, a neighbouring squire, being dreadfully alarmed by this intelligence, said to himself, 'Well, if Sir John entertains the judge hospitably, I do not see why I should not do the same by the jury.' So he invited to dinner the whole of the special jury summoned to try the cause. Thereupon the baronet's courage failed him, and he withdrew the record, so that the cause was not tried; and, although I had my dinner, I escaped all suspicion of partiality."—1 Camp. C.J.s, 555.

COUNSEL CHANGING THEIR CIRCUITS.

Wedderburn had never gone any circuit before he got a silk gown; and no rule can be better established than that a barrister is not for the first time to join a circuit with a great professional reputation already acquired, whereby he may at once step into full business, and suddenly disturb vested rights. For this reason a barrister may only change his circuit once, and this must be done (if at all) while he is still "clothed in stuff." The penalty for the transgression of such a rule is, that the offender is excluded from the bar mess on the circuit, and although he cannot be prevented from appearing in court and pleading a cause for any client who may employ him, no other barrister will hold a brief with him, and he is "sent to Coventry." The

spirit, if not the letter of this law, was now flagrantly broken by Wedderburn. Sir Fletcher Norton, long "the cock of the walk," had just left the Northern Circuit on being made Attorney-General, and had given up an immense quantity of business to be struggled for. There were various speculations as to the manner in which it would be distributed among his juniors, who had long been impatient for his death or promotion, when the incredible report was spread, that Mr. Wedderburn, with his new silk gown, meant to join the Northern Circuit, in the hope of stepping into the lead. This was not believed till he actually made his appearance at York. The horror of the barristers was then much enhanced by the intelligence that he was attended as clerk by the late clerk of Sir Fletcher Norton, well acquainted with every attorney north of Trent. He did not boldly set professional etiquette entirely at defiance, but in vain tried to justify himself by contending "that never yet having gone any circuit, he could not be within the regulation against changing circuits; that every man called to the bar had a free right to choose a circuit; and that no attempt had ever before been made to limit the time within which the choice must be exercised." An extraordinary meeting of the Northern Circuit bar was immediately called, when it was moved, that no member of it should hold a brief with the interloper. If this had been carried unanimously, he must have packed up his wig and his silk gown and instantly returned to London. But Wallace, afterwards Attorney-General, dissented. So Wedderburn was allowed to go on.—6 Camp. Chanc., 62.

AN OCULIST DINING WITH BARRISTERS ON CIRCUIT.

Taylor, the oculist, was invited to dine with the barristers of the Oxford Circuit, and in course of the evening he represented himself to have performed wonders upon wonders, so that Bearcroft, one of the leaders, was rather out of humour with so much self-conceit. At last Bearcroft said, "Pray, Chevalier, as you have told us of a great many things which you have done and can do, will you be so good as to try to tell us anything which you cannot

do?" "Nothing so easy," replied Taylor. "I cannot, for example, be so indecent as to pay my share of this excellent dinner bill, and that, sir, I must ask you kindly to do for me."

A COUNSEL GETTING A BED ON CIRCUIT.

Serjeant Whitaker was on the Norfolk Circuit. A friend at one of the assize towns offered him a bed. The next morning the lady of the house asked how he had slept, and hoped that he had found himself comfortable and warm. "Yes, madam, yes; pretty well on the whole. At first, to be sure, I felt a little queer, for want of Mrs. Whitaker; but recollecting that my portmanteau lay in the room, I threw it behind my back, and it did every bit as well."—2 Woolrych Serj., 565.

AN EMINENT COUNSEL PICKING UP BARGAINS ON CIRCUIT.

Lord Campbell, in his Autobiography, says: "Taunton, a leader of our sessions and afterwards a judge of the Court of King's Bench, had gained great reputation at Christchurch under Dean Jackson. He was a fine scholar as well as a deep lawyer, and I think he would have made a greater figure in life, had not the effect of his good qualities been impaired by the most unaccountable love of saving. I was once returning with him by the mail coach from the sessions, when he said, 'I think I have done rather a clever thing: I found that meat is a penny a pound cheaper at Gloucester than in London, and I have brought enough to serve my family for a week.' But as we were leaving the yard of the Golden Cross, Charing Cross, where we alighted, I found him in a violent altercation with the coachman, who insisted on detaining his trunk till he should pay twopence a pound for his extra luggage. He was famous for grumbling at his ill luck. He said if he had only two briefs at the assizes, one in the civil and one in the crown court, the two cases were sure to come on at the same moment. Hearing how the value of property near the river Thames had risen by the construction of Waterloo bridge, he observed, 'It will be long before they build such a bridge near my house in Chancery Lane!'"—1 L. Camp. Life, 258.

JUDGE TAKING HIS WIFE ON CIRCUIT.

Lord Ellenborough was once about to go on the circuit, when Lady Ellenborough said she would like to accompany him. He replied that he had no objection, provided she did not encumber the carriage with bandboxes, which were his utter abhorrence. During the first day's journey, Lord Ellenborough, happening to stretch his legs, struck his foot against something below the seat. He discovered that it was a bandbox. Up went the window and out went the bandbox. The coachman stopped, and the footman, thinking that the bandbox had tumbled out of the window by some extraordinary chance, was going to pick it up, when Lord Ellenborough furiously called out, "Drive on!" The bandbox accordingly was left by the ditch-side. Having reached the county town where he was to officiate as judge, Lord Ellenborough proceeded to array himself for his appearance in the Court-house. "Now," said he, "where's my wig, where is my wig?" "My lord," replied his attendant, "it was thrown out of the carriage window."

CHIEF JUSTICE HALE AND JOHN BUNYAN'S WIFE.

John Bunyan's wife went to Lord Hale on circuit to ask if her husband could be discharged. The judges thus treated her:—*Sir Matthew Hale*: "Alas, poor woman!" *Judge Twisdens*: "Poverty is your cloak, for I hear your husband is better maintained by running up and down a preaching, than by following his calling." *Sir Matthew Hale*: "What is his calling?" *Elizabeth*: "A tinker, please you, my lord; and because he is a tinker, and a poor man, therefore he is despised, and cannot have justice." *Sir Matthew Hale*: "I am truly sorry we can do you no good. Sitting here, we can only act as the law gives us warrants; and we have no power to reverse the sentence, although it may be erroneous. What your husband said was taken for a confession, and he stands convicted. There is, therefore, no course for you but to apply to the King for a pardon, or to sue out a writ of error, and the indictment, or subsequent proceedings, being shown to be contrary to law, the sentence shall be reversed, and your husband shall be set at liberty. I

am truly sorry for your pitiable case. I wish I could serve you, but I fear I can do you no good!"—State Trials.

A CONCISE COUNSEL'S STORY ON CIRCUIT.

Lord Brougham says that when George Wood, afterwards Baron Wood, was on the Northern Circuit, one of the great amusements after dinner at the circuit table was to hear that counsel tell his favourite concise story, or rather report, of a case that actually occurred. It was the only story he could tell, and he always told it in the same words, and with the same unbounded applause, though everybody knew it by heart. It was this: "A man having stolen a fish, one, seeing him carry it away half under his coat, said, 'Friend, when next you steal, take a shorter fish, or wear a longer coat.'" This narrative, consisting of thirty-one words, was admitted to give a very graphic report of the whole situation, and to allow scope to every one's imagination to fill up the outlines.

The same eminent pleader, Mr. Wood, used to make very concise speeches to the jury. And when he used to be interrupted and set right as to some point, whether of fact or law, whatever it might be, he invariably retorted in the same style, "True, gentlemen, it is as the learned counsel says, but so much the worse for his argument."—2 L. Brougham's Works, 371.

A JUDGE SAVING A POINT ON CIRCUIT.

When old Judge Henn was on circuit in 1789 at Wexford, two young barristers contended before him with great zeal and pertinacity, each flatly contradicting the other as to the law of the case; and both at each turn of the argument, again and again referred with exemplary confidence to the learned judge, as so well knowing that what was said by him (the speaker) was right. The judge said, "Well, gentlemen! can I settle this matter between you? You, sir, say positively the law is one way; and you, sir (turning to the opponent), as unequivocally say it is the other way. I wish to God, Billy Harris (leaning over and addressing the registrar who sat beneath him), I knew what the law *really* was!" "My lord,"

replied Billy Harris, rising and turning round with great gravity and respect, "if I possessed that knowledge, I assure your lordship that I would tell your lordship with a great deal of pleasure!" "Then," exclaimed the judge, "*we'll save the point, Billy Harris!*"

COUNSEL ON CIRCUIT AT CONSULTATION.

Serjeant Cockle's convivial powers were most remarkable, especially on circuit. He was once retained in a very important case to be tried at York, and attended a consultation the night previously, to determine on the line of defence. To the consternation of his client, the serjeant entered the room in a state of intoxication, and plainly showed that he was in no condition to attend to any business. He assured the attorney, however, that "all would be right in the morning," an assurance which did not give him much comfort. Cockle then tied a wet napkin round his head, and desired his junior, Mr. Maude, to inform him of the principal points of the case. After this he went to sleep for a few hours, and presented himself in the court next morning as fresh and ready as if he had passed the night in a very different manner. He cross-examined the witnesses with his usual tact and judgment, and his address to the court was as spirited and forcible as any he had ever delivered. Not only did he succeed in obtaining a verdict for his client, but is said to have distinguished himself in a greater degree than ever he had done before.

A JUDGE INVITING HIMSELF TO BREAKFAST.

Lord Kames, when holding a criminal court on the Perth Circuit, after a witness on a capital trial concluded his evidence, said to the witness, "Sir, I have one question more to ask you, and remember you are on your oath. You say you are from Brechin?" "Yes, my lord." "When do you return thither?" "To-morrow, my lord." "Do you know Colin Gillies?" "Yes, my lord, I know him very well." "Then tell him that I shall breakfast with him on Tuesday morning."

SALARY OF QUEEN'S COUNSEL.

This salary of £40 a year, with an allowance of stationery, was continued to all King's Counsel down to the reign of William IV., when it was very properly withdrawn, King's Counselship becoming a grade in the profession of the law instead of an office. But the moderate salary of the Attorney-General was swept away at the same time, although he was still compelled to pay the land tax upon it.—2 Camp. Chanc., 322.

COUNSEL BULLYING WITNESSES.

The Attorney-General, Coke, at the trial of Sir Walter Raleigh, stopped Raleigh in his defence, denounced him as an atheist, saying that he had an English face but a Spanish heart. Cecil, one of the commissioners, said, "Be not so impatient, Mr. Attorney; give him leave to speak." *Coke*. "If I may not be patiently heard, you will encourage traitors and discourage us. I am the King's sworn servant, and I must speak. If he be guilty, he is a traitor; if not, deliver him." (*Note*. Mr. Attorney sat down in a chafe, and would speak no more until the commissioners urged and entreated him. After much ado he went on, and made a long repetition of all the evidence for the direction of the jury; and at the repeating of some things Sir Walter Raleigh interrupted him, and said he did him wrong.) *Coke*. "Thou art the most vile and execrable traitor that ever lived." *Raleigh*. "You speak indiscreetly, barbarously, and uncivilly." *Coke*. "I want words sufficient to express your viperous treasons." *Raleigh*. "I think you want words, indeed, for you have spoken one thing half a dozen times." *Coke*. "Thou art an odious fellow; thy name is hateful to all the realm of England for thy pride." *Raleigh*. "It will go near to prove a measuring cast between you and me, Mr. Attorney." *Coke*. "Well, I will now make it appear to the world that there never lived a viler viper upon the face of the earth than thou."—2 State Trials, 26.

LEADING COUNSEL AND THEIR DEVILS.

Lord Campbell says of Serjeant Copley (Lord Lyndhurst): "He was unscrupulous in his statement of facts

when opening his case to the jury, more particularly when he knew that he was to leave the court at the conclusion of his address, on the plea of attending to public business elsewhere. I was often his junior, and on one of these occasions, when he was stating a triumphant defence, which we had no evidence to prove, I several times plucked him by the gown, and tried to check him. Having told the jury that they were bound to find a verdict in his favour, he was leaving the court; but I said, 'No! Mr. Attorney, you must stay and examine the witnesses. I cannot afford to bear the discredit of losing the verdict from my seeming incompetence. If you go, I go.' He then dexterously offered a reference, to which the other side, taken in by his bold opening, very readily assented."

It was related that Clarke, the leader of the Midland Circuit (under whom Copley was reared), having in the middle of his opening speech observed a negotiation going on for the settlement of the cause, stated confidently an important fact which he had imagined at the moment. When all was over, his attorney afterwards said to him privately, "Sir, don't you think we have got very good terms? But you rather went beyond my instructions." "You fool!" cried he, "how do you suppose you could have got such terms, if I had stuck to your instructions?"

OFFICIAL COSTUME OF BAR.

During the reign of Mary, the lawyers devoted much of their attention to the regulation of their own dress and personal appearance. To check the grievance of "long beards," an order was issued by the Inner Temple, "that no fellow of that house should wear his beard above three weeks' growth, on pain of forfeiting 20s." The Middle Temple enacted, "that none of that society should wear great breeches in their hose, made after the Dutch, Spanish or Almain fashion, or lawn upon their caps, or cut doublets, under a penalty of 3s. 4d., and expulsion for the second offence." In 3 and 4 Ph. and Mary it was ordained by all the four Inns of Court, "that none except knights and benchers should wear in their doublets or hose any light colours, save scarlet and crimson, nor wear any upper velvet cap, or any scarf or wings in their

gowns, white jerkins, buskins, or velvet shoes, double cuffs in their shirts, feathers or ribbons in their caps, and that none should wear their study gowns in the city any farther than Fleet Bridge or Holborn Bridge; nor while in commons, wear Spanish cloaks, sword and buckler, or rapier, or gowns and hats, or gowns girded with a dagger on the back.—Dugd. Orig. Jur., 148.

COSTUME OF LAWYERS.

John Whiddon, a justice of the King's Bench in the first year of Queen Mary, was the first of the judges who rode to Westminster Hall on a horse, for before that time they rode on mules.

In the time of Charles II., one of the judges fell off his horse at Charing Cross, causing great excitement.

The habits of the judges in ancient times being very various, a solemn decree was made by all the judges of the courts at Westminster, in 1635, subscribed by them all, appointing what robes they should thenceforth use and at what times; which rule hath been since observed.

Camd. Soc. No. 5, 120.

COSTUME OF BENCH AND BAR.

In the middle of the seventeenth century, the common law judges adhered to their coifs, or black cloth caps, which they still put on when they pass sentence of death; but the Lord Chancellor and the Speaker of the House of Commons wore round-crowned beaver hats. The full-bottom wig, and the three-cornered cocked hat, were introduced from France after the Restoration. Barristers' wigs came in at the same time; but very gradually, for the judges at first thought them so coxcombical that they would not suffer young aspirants to plead before them so attired. Who would have supposed that this grotesque ornament, fit only for an African chief, would be considered indispensably necessary for the administration of justice in the middle of the nineteenth century?—I Camp. C.J.s, 482.

ORIGIN OF BARRISTERS AND INNS OF COURT.

The first instance occurs in the reign of Henry III., of an advocate being regularly employed in the King's affairs. During fourteen years, from 38 to 52 Henry III., between thirty and forty cases in the court are recorded in which Laurence del Brock pleads for the King, "*sequitur pro rege.*" In the latter year he was raised to the bench. That schools were established in London for instruction in the laws of the kingdom before 19 Henry III., appears from a strict mandate then issued by King Henry to the mayor and sheriffs of that city, prohibiting their continuance. There is nothing that seems to warrant the suggestion which has been made that the King's object in suppressing them was to encourage the establishment of inns of court in the suburbs, although it might probably lead to it; but it more likely arose from a political motive and a wish to discourage the study. The palace, now called Lincoln's Inn, was built in the early part of Henry III.'s reign, by the Chancellor, Ralph de Neville, Bishop of Chichester, and was appropriated by him for the town residence of his successors in that see. The place in which it is situate was first called New Street, but afterwards Chancellor's Lane, now converted into Chancery Lane.—2 Foss, Judges, 200.

INNS OF COURT.

Lord Chancellor Sir Thomas More had been destined by his father to wear the long robe; and having completed his course at Oxford, he was transferred to London, that he might apply to the study of law. According to the practice then generally followed, he began at New Inn, "an Inn of Chancery," where was acquired the learning of writs and procedure; and he afterwards belonged to Lincoln's Inn, "an Inn of Court," where were taught the more profound and abstruse branches of the science. With us a sufficient knowledge of jurisprudence is supposed to be gained by eating a certain number of dinners in the hall of one of the Inns of Court, whereby men are often called to the bar wholly ignorant of their profession; and being pushed on by favour or accident,

or native vigour of mind, they are sometimes placed in high judicial situations, having no acquaintance with law beyond what they may have picked up as practitioners at the bar. Then the Inns of Court and Chancery presented the discipline of a well-constituted university; and, through professors, under the name of "readers," and exercises, under the name of "mootings," law was systematically taught, and efficient tests of proficiency were applied, before the degree of barrister was conferred, entitling the aspirant to practice as an advocate. 1 Camp. Lives of Chanc., 514.

THE TEMPLE CHURCH ORGAN.

There being a great controversy which of the two rival organ-builders, Smith or Harris, should be the artist to supply a new organ to the Temple Church, it was agreed that each should send one on trial, and that the Lord Chancellor, Jeffreys, should decide between them. He decreed for Smith; the deep tones of whose organ still charm us. Harris's went to Wolverhampton, and is said to be of hardly inferior merit.

NARROW PREJUDICES OF INNS OF COURT.

An affair reflected much honour on Lord Loughborough, and very little upon the learned body of Benchers of Lincoln's Inn. Sir James Mackintosh, struck with the defective state of legal education in England, and particularly with the gross ignorance displayed by his brethren at the bar of the principles of general jurisprudence, proposed to give a course of lectures on "The Law of Nature and Nations," and asked the Benchers of Lincoln's Inn that he might have the use of their hall as a lecture-room. These venerable men, who had reached their present dignity without being required to do more than eat a certain number of dinners in public, and whose principal occupation now was to order for their own table all the choice delicacies of the season, under the name of "exceedings," were greatly shocked by this proposed innovation, and being almost all blindly furious anti-Jacobins, trembled at the idea of the minds of the rising generation being poisoned by the author of the

"Vindiciæ Gallicæ." At the benchers' table there is supposed to be the same dinner as at the students', and the same "commons" are actually put before them, but with the addition of any other dishes that any benchers may fancy. A lean student having complained to a fat old benchers of the starved condition of those who dined in the lower part of the hall, received this answer, "I assure you, sir, we all fare alike; we have the same commons with yourselves." The student replying, "I can only say, we see pass by us very savoury dishes on their way to your table, of which we enjoy nothing but the smell." "Oh!" exclaimed the benchers, "I suppose you mean the 'exceedings,' but of these the law takes no cognizance." This appeal of Lord Loughborough was successful; and the lectures being given, it was hoped that the name of Mackintosh would be connected with a new era in the history of juridical study in England. And they were popular at the time.—6 Camp. Chanc., 290.

READERS OF INNS OF COURT, AND MOOTS AND FEASTS.

At one time a reader was annually appointed by each inn, and used really to deliver lectures. The reader chose a particular subject or statute as a text, and after comments thereon, called other barristers to declare their opinions, after which the judges and serjeants might speak. But after the lapse of time these readings degenerated into costly feasts, the expense of which frequently exceeded £1,000.

Sometimes an attempt to revive the readings has been made, especially in 1780 and 1796, but the practice could never be revived. In vacations also, after supper, a moot was often held, at which students debated points of novelty and difficulty before the benchers. But these also died out, though in some respects they are maintained under the modern form of debating societies.

Sometimes also at a reader's feast, a masque or theatrical entertainment would be given, especially in Queen Elizabeth's time. In 1601, Shakespeare's "Twelfth Night" was thus performed on Candlemas day, in the Middle Temple Hall. And the King and Queen, at later dates, often enjoyed the amusement of the masques. The

Queen danced with some of the masquers. Before the trouble of the grand rebellion, these were some of the established amusements of the town. The Christmas revels in both the Inner and Middle Temple were also magnificent, and Sir Christopher Hatton for elegance of his dancing and general hilarity was considered by his contemporaries to have fairly earned his title to the highest post in the law, that of Lord High Chancellor, whose merit was discovered by Queen Elizabeth. The memory of these revels, after they vanished from the head centres in the metropolis, is maintained in modern times by the grand courts of the circuits.

EMBLEMS OF THE TEMPLE.

The following lines were found stuck on the Temple Gate, in 1744:

As by the Templars' holds you go,
 The *horse* and *lamb* displayed,
 In emblematic figures show
 The merits of their trade.
 That clients may infer from thence
 How just is their profession,
 The lamb sets forth their *innocence*,
 The horse their *expedition*.
 Oh, happy Britons! happy isle!
 Let foreign nations say,
 Where you get justice without guile
 And law without delay!

The above lines soon produced the following answer:

Deluded men, these holds forego,
 Nor trust such cunning elves,
 These artful emblems tend to show
 Their clients, not themselves.
 'Tis all a trick, these are all shams,
 By which they mean to cheat you,
 But have a care, for you're the *lambs*
 And they the *wolves* that eat you.
 Nor let the thoughts of no delay
 To these their courts misguide you,
 'Tis *you're* the showy *horse*, and they
 The jockeys that will ride you.

Gent. Mag., 1748.

The eminent antiquary, Daines Barrington, after ex-

ploring the origin of the Winged Horse and Lamb, as the emblems of the two Temples, concluded as follows:

The Inner Temple originally had a horse with two men riding on it, to indicate the poverty of the order of Templars. But when that order grew more prosperous they became ashamed of the two riders, and by, at latest, the time of Elizabeth, they substituted the more poetical figure of Pegasus, and as indicating that their kind of learning advanced men to the stars, *volat ad aethera virtus*.

The Middle Temple, fifty years later, selected the Holy Lamb to distinguish their society, the Lamb being represented sometimes in the older seals of the original society, before it was subdivided into the Inner Temple and Middle Temple.

THE TEMPLARS UNDER THEIR LORD OF MISRULE.

On Saturday last (Jan., 1627) the Templars chose one Mr. Palmer, son of Sir Guy Palmer, their lord of misrule, under the name of lieutenant, who the same night sallied to gather up his rents, not only in Ram Alley but also in Fleet Street, from Ram Alley to Temple-gate. At every door they came to, they winded the Temple horn, and if at the second blast or summons they within opened not the door, their lieutenant's voice was, "Give fire, gunner,"—his gunner being a robust blacksmith, and the gun or petard itself being a huge, overgrown smith's hammer. My Lord Mayor, being complained to on Sunday morning, said he would be with them about eleven o'clock p.m. willingly, that all that would, should attend with their halberds. His lordship thus attended, and advanced as high as Ram Alley, forth came, with their swords, and in their hose and doublets, out of the Temple-gate, Mr. Palmer and some gentlemen. One bade him come to the Lord Mayor; he answered, my Lord Mayor might come to him; but in fine they agreed to meet half way. Mr. Palmer being quarrelled with for not putting off his hat to my Lord Mayor, and giving cross answers, the halberds began to fly about his ears, and he and his company to brandish swords. At last, Mr. Palmer was seized and forced to lie in the compters

among common prisoners for two nights. On Tuesday the King's attorney sued the Lord Mayor for their liberty, which was granted on craving pardon and repaying the money he had gathered, and making reparations for broken doors. Thus the game ended.

THE INNS OF COURT MASQUING, AND THEIR PRECEDENCE.

As Prynne had abused the Queen's love of the stage, the Inns of Court, in 1633, as a set-off, resolved to give a grand masque in honour of Charles I. and the Queen. The Inns chose the best dancers and masquers among their members; but before going to the banqueting house at Whitehall, in four rich chariots, each drawn by six horses, the gentlemen differed about the order of their going, and as to which of the Inns of Court should have the first chariot, and then as to the rest in their order, and how the four masquers should sit in the chariot, and who should have the chief place. The committee, after fierce debate, at last agreed that the chariots should be made after the fashion of the Roman triumphal chariots, of an oval form, so that in the seats, which all faced the horses, there should be no difference. It was then settled by ballot which chariot was to go first. The procession and scarlet liveries, trumpets, swords, bâtons, torches, pages and lacquies and high-mettled horses, according to Whitelock, one of the chief promoters, "made the most glorious and splendid show that ever was beheld in England." There were anti-masquers also who followed, consisting of all the beggars and cripples of the town, with music of keys and tongs, dirt carts and jades of horses to carry them. In the ballot for precedence Gray's Inn went first, then the Middle Temple, then Inner Temple and Lincoln's Inn. All Whitehall was a blaze of light from the torches, and the ladies, decked with jewels and rich cloths, waved their hands from balconies. The Court was in ecstasies, and begged the procession to go round and return once more, to give another view. The Queen danced with some of the masquers, and the revelry went on till daylight did appear. The Queen was so delighted that she begged a repetition, and the Lord Mayor had to invite all the company to Merchant Taylors'

Hall, and this gave great contentment and infinite happiness to everybody. The music alone cost £1,000. Prynne's ears were cut off by the Star-chamber, and he was disbarred.

THE LORD MAYOR'S SWORD WHEN VISITING THE TEMPLE.

Pepys says, in his Diary, 1668: "Meeting Mr. Belwood, did hear how my Lord Mayor, being invited this day to dinner at the readers at the Temple, and endeavouring to carry his sword up, the students did pull it down, and forced him to go and stay all the day in a private counsellor's chamber, until the reader himself could get the young gentlemen to dinner; and then my Lord Mayor did retreat out of the Temple by stealth, with his sword up. This do make great heat among the students; and my Lord Mayor did send to the King, and also, I hear, that Sir Richard Browne did cause the drums to beat for the train bands. But all is over, only I hear that the students do resolve to try the charter of the city."

It is said that afterwards both parties appeared before the King in Council, when the matter was found to depend on right and privilege, which a court only could determine. It would appear that the matter has never been determined till this day.—6 Pepys' Diary, 5.

HOW A LAW STUDENT RECOVERED MONEY LOST AT PLAY.

Lord Treasurer Burghley used to relate that when he was a student at Gray's Inn, in 1542, at the age of nineteen, a mad companion of his enticed him to play. Whereupon, in a short time he lost all his money, bedding and books, to his companion, having never used play before. And being afterwards among his other company, he told them how such a one had misled him, saying he would presently have a device to be even with him. And he was as good as his word. For, with a long trunk he made a hole in the wall near his playfellow's bed's head, and in a fearful voice spoke thus through the trunk: "Oh, mortal man, repent! repent of thy horrible time consumed in play, cozenage, and such lewdness as thou hast committed, or else thou art damned and canst not be saved!" Which, being spoken at midnight, when he was

all alone, so amazed him as drove him into a sweat for fear. Most penitent and heavy, the next day, in presence of the youths, he told with trembling what a fearful voice spake to him at midnight, vowing never to play again. And calling for Mr. Cecil, asked him forgiveness, on his knees, and restored all his money, bedding, and books. So two gamesters were both reclaimed with this merry device, and never played more.—Peck's Desid. Curios., 5.

ELECTION OF BENCHERS OF INNS OF COURT.

In 1846, Mr. H. Hayward, Q.C., a member of the Inner Temple, having been refused election to the bench of that inn, owing, as was understood, to some quarrel between him and Mr. Roebuck, Q.C., already a bencher of the same inn, Mr. Hayward petitioned the judges to interfere, and after long argument on both sides they came to the following decision.

"The judges, who hear this petition argued, in the exercise of their general visitorial power, think it right to declare their unanimous opinion that the benchers of the Inner Temple have the right to determine: 1. Whether they will add to their number by any new election; and 2. Which of the members of the bar belonging to their society they will elect to the bench.

"The judges, therefore, are all of opinion that the petitioner had no inchoate right to be called to the bench; but they all think the mode of election by which a single black ball may exclude is unreasonable. And they strongly recommend the benchers in future to conduct their elections to the bench in some more satisfactory manner.

"(Signed) Denman, F. Pollock, J. Parke, E. H. Alderson, J. Patteson, T. Coltman, R. M. Rolfe, W. Wightman, C. Cresswell, W. Erle, T. J. Platt."

The result was, that the benchers of the Inner Temple, in 1847, came unanimously to the following resolution: "That in future no one shall be elected to the bench of the Inner Temple, unless he obtain the votes of the majority of the existing benchers, and that four black balls shall be sufficient to exclude."

A BENCHER STRAYING ON SUNDAY FROM THE CHAPEL OF
HIS INN.

When the judicious Gataker, near the end of Elizabeth's reign, was chosen chaplain of Lincoln's Inn, his preaching was much admired, being so abundant in learned quotations. He preached for ten years, seldom missing a day, and Popham, Hobart, and the other lawyers, were all so satisfied, that when a bencher did not attend, he was questioned as to the reason of his absence. One Sunday, that pleasant gentleman, Mr. Thomas Hitchcock, being missed at chapel, and coming late into the hall to dinner, was asked by his brethren where he had been straying abroad. "I have been," quoth he, "at Paul's Cross." "Thou wentest thither to hear some news?" said the others. "No, truly," replied he: "I went upon another occasion, but I learned that indeed there, which I never heard of before,—how the ass came by his long ears. For the preacher there told us a story out of a Jewish rabbin; that Adam, after he had named the creatures, called them one day again before him, to try whether they remembered the names that he had given them. And having by name cited the lion, the lion drew near, and the horse likewise. But then calling to the ass in like manner, the ass, having forgotten his name, like an ass, stood still. Whereupon Adam, having beckoned to him with his hand, so soon as he came within his reach, caught him with both hands by the ears and plucked him by them so shrewdly, that for his short wit he gave him a long pair of ears." Upon this story told them, one of the benchers told Mr. Hitchcock he was well enough served for his gadding abroad; he might have heard better and more useful matter had he kept himself at home.

COMPELLING INNS OF COURT TO ADMIT TO THE BAR.

In a case before Lord Mansfield and other judges, Mr. William Hart asked for a mandamus to compel the benchers of Gray's Inn to call him to the degree of barrister-at-law. The court, however, said that no such remedy was proper, for these inns were voluntary societies, and the judges were only the visitors. Any complaint should be to the judges in the latter capacity; who, however, had

power only over actually admitted members. Hence, they could not order the benchers to admit anybody, any more than the court could order a college to admit a particular student to their fraternity.

THE FIRE IN THE TEMPLE IN 1666.

Lord Clarendon, in describing the fire in the Temple in 1666, says: "The Lord Mayor, though a very honest man, was much blamed for want of sagacity in the first night of the fire, before the wind gave it much advancement. For, though he came with great diligence as soon as he had notice of it, yet never having been used to such spectacles, his consternation was equal to that of other men. Nor did he know how to apply his authority to the remedying of the present distress; and when men who were less terrified with the object pressed him very earnestly that he would give order for the present pulling down those houses which were nearest, and by which the fire climbed to go further, the doing whereof at that time might probably have prevented much of the mischief that succeeded, he thought it not safe, and made no other answer than that he durst not do it without the consent of the owners. His want of skill was the less wondered at, when it was known afterward that some gentlemen of the Inner Temple would not endeavour to preserve the goods which were in the lodgings of absent persons, because they said it was against the law to break up any man's chamber."

THE ATTORNEY-GENERAL IN THE HOUSE OF COMMONS.

After a committee to search for precedents, it was resolved that "Mr. Attorney-General Bacon remain in the house for this Parliament, but never any Attorney-General to serve in the lower house in future." The right of the Attorney-General to sit as a member of the House of Commons has not since been seriously questioned. As he is summoned, according to immemorial usage, to advise the House of Lords, and ought to return his writ and to take his place on the woolsack, it is easy to conceive that conflicting duties might be cast upon him; but his attendance on the Lords is dispensed with,

except in peerage cases, and it has been found much more convenient that he should be allowed to act as law adviser to the House of Commons, which might otherwise be *inops concilii*.—2 Camp. Lives of Chanc., 336.

ATTORNEY-GENERAL IN HOUSE OF LORDS AND CONFLICTING DUTIES.

While Somers was Attorney-General, in 1693, sitting in St. Stephen's Chapel, as chairman of a committee of the whole house, the Lords sent for him to advise them in the case of Lord Banbury, who, being charged with murder, had pleaded his peerage. He immediately left the chair and broke up the committee, which gave some disgust to the Commons; and the Lords, because they had waited some time for him, instituted an inquiry whether the Attorney-General is not obliged by his post to attend their house, and presented an address to the Crown, praying that he might be directed to do so. The Attorney-General is summoned on these occasions to the House of Lords by a writ, in all respects the same as that of a peer, omitting the words "*ad consentiendum*." On the trial of a peer he sits without the bar, if he be a member of the House of Commons, and within the bar if he is not. If he returns his writ, he may sit on the woolsack; but then he is precluded from pleading in any private cause at the bar. From 1620 to 1670 no Attorney-General continued a member of the House of Commons after his appointment. Since then he has always been a member, unless casually—since the Reform Act of 1832—from the difficulty of finding a seat. Previously a seat was found for him by the Treasury, at the fixed price of £500. His proper official place in the King's Bench is under the judges, on the left hand of the Master of the Crown Office. Ralph, the historian, ascribes the proceedings taken on this occasion against Somers to the spite of the Jacobites.—4 Camp. Chanc., 109.

AN ATTORNEY-GENERAL SORE AT HEART.

When Lord Chancellor Manners retired, in 1822, from the Irish chancellorship, Plunket, the Attorney-General, then famous as an orator and lawyer, was looked to as

the proper successor, and all the newspapers hailed him as the coming man. But he could not be spared from the House of Commons, and Sir Anthony Hart, of the English bar, was appointed. On the first sitting of that judge, the Irish bar assembled in great force, and included Plunket. Shiel asked O'Connell, "How does Plunket look this morning, Dan?" Dan, rolling his large grey eye at the bench, replied, "Oh, very sore at *heart*."

POLICY OF ATTORNEY-GENERAL'S EX-OFFICIO INFORMATION.

The policy of this mode of prosecuting libels has had its opponents and defenders, though it is now in point of practice confined to seditious and blasphemous libels. It has been often complained of in Parliament as, in its secrecy and swiftness and overwhelming force, too nearly akin to despotism, and somewhat out of harmony with a land of liberty, where prosecutions are subject to fixed and well-understood laws, and where a man can defend himself against all antagonists on equal terms. On the other hand it has been urged, that the press often acts like an assassin, and must be coped with by weapons which may be nearly as suddenly and energetically used; and that this cannot be done except by confiding a discretion to one, who is bound over to prudence and moderation by all the circumstances of his office, and is too well watched to be likely to abuse it. And it is added, that though the power has been used since the time of Edward III., no great abuses have been discovered in it. Like the sword of Goliath, it is reserved for great occasions. And what now makes less important the existence of any weapon so secret and deadly in the hands of Government, is the knowledge, that while there is no censorship and no registry of printing presses or of newspapers, while education prepares its millions of readers and writers, a champion will never fail to come forth on any great emergency. Even in the midst of legions of spies and informers, a hand will issue from the crowd and write on the wall in letters of fire immortal slanders; a hand without a name, which cannot be traced, but will leave many things well spoken and wholesome to be remembered in all future time.—Paterson's Lib. Press, 103.

THE POLICY OF PUNISHING LAMPOONS.

Pope Hadrian VI., being much annoyed by defamatory libels and pasquinades, was at his wits' end how to deal with them, and intended great severity. The facetious wits used to fasten their libels to the statues of Pasquin and Marforio, and the Pope had a great mind to have those two statues thrown into the Tiber. And this would have been carried out, if he had not been cautioned by the Spanish ambassador, the Duke of Sessa, who wittily thus advised him: "What are you going to do, holy father? Is it not much better to pardon those two mute statues than to open the mouths of all the town? If you throw them into the river the frogs will croak all the railleries over again, so that everybody who passes will hear them." The Pope then said, "True! Well, let us burn them and reduce them to ashes, so that there will be an end of them for ever." "Nay," said the ambassador, "if you burn their patrons, then the fools will meet annually, and set apart a whole day to celebrate the anniversary of the death, and everything will be repeated." The Pope saw the wit, and resolved not to meddle with the matter.

ATTORNEY AND SOLICITOR-GENERAL DOING BUSINESS TOGETHER.

Lord Haddington asked Wedderburn once, when he was Chief Justice, how he possibly contrived to get on with Thurlow, when he was under him as Solicitor-General, considering the unwonted quantity of public work they had to do together, both as to America, France, and Spain, owing to the indolence of Lord North and the incapacity of several of his colleagues. "Nothing so easy," said Lord Loughborough: "I knew Thurlow to be a bully, and only a bully, with no moral nerve, but intolerable if not subdued; so I resolved on my course. The first paper I had to prepare was one of great importance and difficulty, and I sent it to him that he might consider and revise. When I saw him he swore fearfully, declared that there never was anything so ill done—it could not be used. He had no time to

correct it, it was too bad to be corrected, I must do it over again. I said, 'I beg your pardon, I have done my best. I know there are great imperfections in it, I am not satisfied myself, but I cannot do it better; I have bestowed my whole mind upon it, and if you cannot take it, you must prepare the paper yourself.' He growled very savagely, but he saw I was quite determined, and so I left it with him. When we next met, he produced my paper without a word of alteration, said he had no time to alter, that it must just do, but it was a perfect disgrace to them both, and he should say so, for he was ashamed of the paper. 'Indeed, Mr. Attorney, you shall not say so, and it is better we understand each other once for all. I will assist you to the utmost of my power; if you cannot use the papers I draw, then of course I may be unfit for my office, and you must do the work; but if you adopt my paper, it is no longer mine; it is yours, and must be yours, and yours alone. I will have neither merit nor discredit from it.' I said this with the utmost coolness; he swore away, but said: 'Well, take it away, it will do as well as anything else, I suppose.' I never afterwards had a single difference with him."—6 Camp. Chanc., 93.

SUCCESSORS IN OFFICE OBLIGING EACH OTHER.

Henry Erskine, the Scotch advocate, succeeding Dundas as Lord Advocate, the latter good-humoured politician offered to lend Erskine his embroidered official gown, as he would not want it long. "No," said he in the same spirit, "I will not assume the abandoned habits of my predecessors."

ATTORNEY-GENERAL TO THE QUEEN.

The death of Queen Caroline was a heavy blow to Brougham. He not only was lowered in political consequence, by losing an instrument of annoyance which he could wield with effect, but it touched him very closely in the profession, for, losing his office of Attorney-General to the Queen, he was obliged to doff his silk gown and full bottom wig, and, attiring himself again in bombazin and a common tie, to "take his place in court, without

the bar accordingly." George IV. had the pusillanimity to make a personal affair between himself and Brougham and Denman of what had passed during the Queen's trial. Out of revenge for having been compared by them to Nero, he expressed a determined resolution that neither of them should be admitted into the number of his "counsel learned in the law," and that they should be depressed as long and as much as it was in his power to depress them. This resolution, to which he long adhered, till it was finally overcome by the manly representations of the Duke of Wellington, at first annoyed Brougham very much; but the ex-Attorney soon found that, for a time at least, his consequence was rather enhanced by being considered the victim of royal animosity because he had courageously done his duty.—8 Camp. Chanc., 328.

THE ATTORNEY-GENERAL SEEKING TO BE CHIEF BARON.

In 1788, it seems to have been considered that the only business of the Chief Baron was to try smugglers. When Sir W. Garrow was Attorney-General he claimed this office, on the death of Chief Baron Thomson; but Lord Eldon claimed the patronage as belonging to the Great Seal, and showed that no Attorney-General had been made Chief Baron for hundreds of years. Sir Vicary Gibbs was said to be the second Attorney-General who consented to become a puisne judge.—6 Camp. Chanc., 122.

OFFER OF AN INTERMEDIATE OFFICE TO LEADING COUNSEL.

Mr. Canning, in 1827, offered to Brougham the office of Chief Baron of the Exchequer, saying in answer, upon his declining it: "Why, the post of Chief Baron is, you know, the half-way house to that of Lord Chancellor." "Yes," replied Brougham; "but you deprive me of the horses which are to take me on."

LOTTERY IN LEGAL OFFICES.

Lord Campbell, in his *Lives of the Chief Justices*, written before he became Chief Justice himself, says: "The

honours of the profession may be considered a lottery ; or, if they are supposed to be played for, in the game there is more of luck than of skill. At times we see a superfluity of men well qualified for high legal offices, while years roll on without a vacancy. At times vacancies inopportunately arise when they cannot be reputably filled up."

ATTORNEY-GENERAL AND THE BENCH.

Lord Raymond, when at the bar, was an Attorney-General, and was said to be the first Attorney-General who accepted a puisne judgeship. Lord Campbell says that there never had been an instance of this before that time, and hardly any of his condescending even to become Chief Baron of the Exchequer. The next example was that of Sir Vicary Gibbs. Lord Brougham said that when Perceval was shot, his nerves, formerly excellent, suddenly and entirely failed him, and he descended from the station of Attorney-General to that of a puisne judge in the Common Pleas.

ATTORNEY-GENERAL AND HIS SOLICITOR-GENERAL SYMPATHIZING.

At the trial of Horne Tooke, Scott, who prosecuted as Attorney-General, declared, in undertaking the prosecution, he had been guided by the dictates of his conscience, and expressed his hope that after he was gone, his children might feel, that in leaving them an example of public probity, he had left them an inheritance far more precious than any acquisition of property or honour he could bequeath to them. In repeating these words, Sir John Scott shed tears, and to the surprise of the court, Mitford, the Solicitor-General, wept also. "What on earth," said some one to Horne Tooke, "can Mitford be crying for?" "At the thought of the little inheritance that poor Scott is likely to leave his children!" was Tooke's reply.

CHAPTER VI.

*ABOUT THE CHURCH, BISHOPS, AND
CLERGY.*

SPOLIATION OF CHURCH PROPERTY.

Three parliaments of Henry IV. met in Henry Beaufort's first chancellorship, at which nothing very memorable was effected; but at the last of them an attempt was made by the Commons (probably at the instigation of the King), which, if it had succeeded, would have greatly altered both the ecclesiastical and civil history of the country. All who are friendly to a well-endowed Church ought to exclaim, "Thank God, we have had a House of Lords." The Chancellor, in a speech from the text, "*Rex vocavit seniores terræ*," having pressed most urgently for supplies, the Commons came in a body and, the King being on the throne, proposed, "That without burthening his people he might supply his occasions, by seizing on the revenues of the clergy; that the clergy possessed a third part of the riches of the realm, which evidently made them negligent in their duty; and that the lessening of their excessive incomes would be a double advantage both to the Church and the State."

Archbishop Arundel, being now free from the trammels of office, said to the King, who seems to have been addressed as the president of the assembly, "That though the ecclesiastics served him not in person, it could not be inferred that they were unserviceable; that the stripping the clergy of their estates would put a stop to their prayers night and day for the welfare of the State; and there was no expecting God's protection of the Kingdom if the prayers of the Church were so little valued." The Speaker of the Commons, standing at the bar, smiled, and said openly, that he thought the prayers of the Church a

very slender supply. To which the Archbishop answered, with some emotion, "That if the prayers of the Church were so slighted it would be found difficult to deprive them of their estates without exposing the Kingdom to great danger; and so long as he was Archbishop of Canterbury, he would oppose the injustice to the utmost in his power." Then, suddenly falling on his knees before the King, he strongly pressed him in point of conscience, and endeavoured to make him sensible that of all the crimes a prince could commit, none was so heinous as an invasion of the Church's patrimony. The King, seeing the impression made upon the peers, declared "That he had made a firm resolution to support the Church with all his power, and hoped, by God's assistance, to leave her in a better state than he found her." The Archbishop, construing this as a peremptory veto on the proposal of the Commons, turned to them and made a most insulting speech, telling them their demand was built wholly on irreligion and avarice. "And verily," added he, "I will sooner have my head cut off than that the Church should be deprived of the least right pertaining to it." Such a scene is very inconsistent with our notions of parliamentary decorum. The Commons, not convinced, on their return to their own chamber, passed a bill to carry their scheme into effect; but the solicitations of the Archbishop and the other prelates were so powerful with the Lords that they threw it out.—I Camp. Lives of Chanc., 314.

CONGÉ D'ÉLIRE—TO ELECT BISHOPS.

The prerogative of the Crown to appoint bishops was attacked by the Pope, who claimed that the gift of the ring and staff should come from him, while the Crown should content itself with mere feudal homage. And, owing to the overpowering effect of custom, even the Parliament of Henry VIII. resorted to the transparent artifice of appearing to give the power of selection to the dean and chapter, by first issuing a *congé d'élire* (as was adopted in the reign of John), and then confirming their nomination. And though the legislature of Edward VI. declared this to be no election, but "only having colours, shadows, and pretences of an election," it survives to this

day, not without exciting astonishment in bystanders. The astonishment lies in the effort to understand how a chapter can be said to elect, when the person to be elected is dictated to them, and they can be punished by *præmunire* or forfeiture of lands and goods for not choosing the person so nominated. And the astonishment still further increases when the forms observed in this fictitious election allow objectors to come forward to object, while there is no court or constituted authority in existence to entertain or dispose of such objections.—Paterson's *Lib. Press and Worship*, 409.

THE FIRST BISHOPS IN HOUSE OF LORDS.

One of the articles of the Constitutions of Clarendon, in the time of Henry II. (1164), shows that the right of sitting in the House of Lords, now belonging to bishops, and greatly prized by them, was originally forced upon them at a time when they thought it an indignity to sit in any assembly except by themselves, as a separate order. It was to this effect: "That the archbishops, bishops, and other spiritual dignitaries should be regarded as barons of the realm, should possess the privileges and be subjected to the burthens belonging to that rank, and should be bound to attend the King in his great councils, and assist at all trials till sentence either of death or loss of members be given against the criminal."—*Parl. Hist.*

BISHOPS IN PARLIAMENT.

Hyde, afterwards Lord Chancellor Clarendon, began as an anti-courtier, and assisted in drawing up the Reasons in support of the first bill for turning the bishops out of the House of Lords (among others), "Because Bishoppes' votes in Parliament are a very great hindrance to their ministeriall functions; they are but for their lives, *ergo*, are not so fit to have a legislative power over the inheritances, persons, and liberties of others. Because of Bishoppes' dependency, and expectancy of being translated to places of greater profit. That several Bishoppes have of late much encroached upon the consciences and liberties of the subject. Because the whole number of them is interested to maintain the jurisdiction of Bishoppes,

which hath been found so grievous to the three kingdoms, that Scotland had utterly abolished it, and multitudes in England and Ireland have petitioned against it. Because the Bishoppes, being Lords of parliament, it setteth too great a distance between them and the rest of their brethren in the ministry; which occasioneth pride in them, discontentment in others, and disquiet to the Church." Yet Clarendon afterwards took credit for the manner in which he manœuvred to defeat the second bill for the same purpose, which was finally carried.—3 Camp. Chanc., 126.

RESTORING BISHOPS TO PARLIAMENT.

The first Church Bill which Chancellor Clarendon introduced met with very little opposition, being to restore the bishops to their seat in the House of Lords. The act for their exclusion had been passed in times of great violence, and there was a general feeling that for the dignity of the assembly of which they had ever formed a constituent part, and for the honour and protection of the Church, they should again exercise their parliamentary functions along with the hereditary nobility.—3 Camp. Chanc., 205.

A BISHOP'S SPEECH IN HOUSE OF LORDS.

A certain bishop in the House of Lords rose to speak, and announced that he should divide what he had to say into twelve parts, when the Duke of Wharton interrupted him, and begged he might be indulged a few minutes, as he had a story to tell which he could only introduce at that moment. A drunken fellow was passing by St. Paul's at night, and heard the clock slowly chiming twelve. He counted the strokes, and, when it was finished, looked towards the clock and said, "D—n you; why could not you give us all that at once?" There was an end of the bishop's story.—1 Greville's Mem., 357.

HOW TO BECOME A BISHOP.

Dr. South, the rector of Islip, and one of His Majesty's chaplains in ordinary, in 1681, preached before the King

(Charles II.) on these words: "The lot is cast into the lap, but the disposing of it is of the Lord." After speaking of the unaccountable accidents in life, the preacher said: "Who that had looked upon Agathocles first handling the clay and making pots under his father, and afterwards turning robber, could have thought that upon such a condition he should come to be King of Sicily? Also, that had seen Masaniello a poor fisherman, with his red cap and his angle, would have reckoned it possible to see such a pitiful thing within a week after shining in his cloth of gold, and, with a word or a nod, absolutely commanding the whole city of Naples? And who that beheld such a bankrupt beggarly fellow as Cromwell first entering the Parliament House, with a threadbare torn cloak and greasy hat, perhaps neither of them paid for, could have suspected that in the space of so few years he should, by the murder of one King and the banishment of another, ascend the throne?" At which the King fell into a violent fit of laughter, and turning to Lord Rochester said, "Odsfish, Lory, your chaplain must be a bishop; therefore put me in mind of him at the next vacancy." Soon after several offers of a bishoprick, both from Charles II. and Queen Anne, were made, but Dr. South declined them for various reasons.

LORD CHANCELLOR THURLOW'S CHURCH PATRONAGE.

On one occasion, a considerable living fell vacant in Lord Chancellor Thurlow's gift, which was solicited by Queen Charlotte, and promised to her *protégé*. The curate, who had served in the parish some years, hearing who was likely to succeed, modestly applied for the Chancellor's intercession that, on account of his large family, he might be continued in the curacy. The expectant rector calling to return thanks, Thurlow introduced the case of the curate, which he represented with great strength and pathos; but the answer was, "I should be much pleased to oblige your lordship, but unfortunately I have promised it to a friend." *Thurlow* replied, "Sir, I cannot make this gentleman your curate, it is true, but I can make him the rector, and by G—d he shall have the living, if he cannot have the curacy." He instantly

called in his secretary, and ordered the presentation to be made out in favour of the curate, who was inducted, and enjoyed the living many years. This anecdote is also told of Lord Chancellor Talbot.

THE CURATES' LARGE FAMILY.

Lord Loughborough used to remark that when he was Lord Chancellor, the greater livings in the Church which he had to bestow gave him no trouble; their destinations were either anticipated or easily determined. But for the smaller livings he had always a multitude of applications, and seldom or never one without several applicants who had eight or ten small children to support.

A CHANCELLOR'S PROMISE OF CHURCH LIVINGS TO APPLICANTS.

Lord Eldon once gave away a Church living for a reason which he states thus: "I lodged at the vicar's, Mr. Bridge's, at Weobly. He had a daughter, a young child, and he said to me, 'Who knows but you may come to be Chancellor? As my girl may probably marry nobody but a clergyman, promise me you will give her husband a living when you have the seals.' I said, 'Mr. Bridge, my promise is not worth half-a-crown, but you may have my promise.'" When Lord Eldon had been some time Chancellor, while sitting one morning in his study, an interesting young girl broke in upon him, introduced herself as the daughter of the Vicar of Weobly, modestly informed him of an affair of the heart which she had with a poor young clergyman, and informed him that a small Herefordshire living, which would make them happy, had the day before become vacant. The secretary of presentations was immediately called in, and she carried back with her the presentation to this living in favour of her lover.

The following was Lord Eldon's answer to an application for a piece of preferment from his old friend Dr. Fisher, of the Charter House:—

"DEAR FISHER,—I cannot, to-day, give you the preferment for which you ask.

"I remain,

"Your sincere friend

"ELDON.

["Turn over."]

Then on the other side,

"I gave it to you yesterday."—Twiss's Eldon.

A CLERGYMAN PRESENTING HIMSELF.

The clergy are prohibited by statute "from buying, or for money directly or indirectly procuring or accepting the next avoidance of, or presentation to, any benefice with cure of souls, any dignity, prebend, or living ecclesiastical;" and the admission shall be void, and the Crown may present a successor. But an ingenious mode has been discovered of defeating that statute, for if a clergyman purchase "an estate for life in the advowson," and a vacancy occurs during such life, then he may present himself, and the bishop has no reason for refusing to examine and admit him. For the courts have said, "an estate for life" is not a next presentation, nor a next avoidance, and the statute must be strictly construed.—Paterson's Lib. Press and Worship, 392.

A CHANCELLOR AND A BISHOP QUARRELLING ABOUT A LIVING.

Having once got into a dispute with a bishop respecting a living of which the Great Seal had the alternate presentation, the bishop's secretary called upon Lord Chancellor Thurlow and said, "My Lord Bishop of — sends his compliments to your lordship, and believes that the next turn to present to — belongs to his lordship." *Chancellor.* "Give my compliments to his lordship, and tell him that I will see him d——d first before he shall present." *Secretary.* "This, my lord, is a very unpleasant message to deliver to a bishop." *Chancellor.* "You are right, it is so; therefore tell the bishop that *I will be* d——d first before he shall present."—5 Camp. Chanc., 665.

THE QUALIFICATIONS OF PRIESTS.

The office of priest may be assumed to be one peculiarly for the deliberate choice of the person seeking it. Yet one of the extraordinary delusions of ancient times was, that it was not only good sense but quite lawful for a congregation to seize and force a person to be ordained, and to force the bishop to ordain him; and St. Augustine was himself so treated. And this practice continued till at last the Emperor Leo decreed that no one should be ordained against his will. And a still more extraordinary doctrine was, that such bishops, when once ordained against their will, could not relinquish the office. One singular rule in ancient times also was, that no person was fit to be a priest who was mutilated in body.

This singular ground of disqualification for a priest, that he must not be mutilated in body, was an accepted axiom. The Council of Nice, instead of seeing the hardship of such a rule, showed great nicety in drawing a distinction between the cases of those who had one limb cut off in order to save the rest of the body, or who had lost part of their bodies by the cruelty of persecutors; and the Council gravely held that these circumstances took these last cases out of the general rule of disqualification. But the council was at the same time quite resolute in holding, that no one who had dismembered himself while in health was on any pretext to be ordained, for this showed he was a self-murderer and an enemy of the workmanship of God. It was supposed that this last rule was made to counteract the mistaken notion on which Origen and some others had acted. And a soldier was deemed disqualified also, because he had either imbrued his hands in innocent blood, or at least bound himself to do so. Another still more inexcusable ground of disqualification was, that the person was or had been a pleader at law.—Paterson's Lib. Press and Worship, 420.

A STRAY SHOT BY AN ARCHBISHOP.

Archbishop Abbot, of Canterbury, was out one day, in 1620, recruiting in Lord Zouch's deer park, and having a cross bow, let fly a barbed arrow, which missed the deer

he aimed at, but killed the keeper. This unforeseen accident threw the archbishop into a deep melancholy. He settled an annuity on the man's widow; but the affair made a great noise, and it was suggested that all the archbishop's goods were absolutely forfeited to the Crown by law. King James said the same thing might happen to an angel; but as there were four bishops then awaiting confirmation, and the archbishop was said to be no longer a bishop, the King issued a commission to ten persons to inquire and report as to the law, two of these being judges and three being bishops. On the first question the commissioners were equally divided, as to the act of the archbishop being a forfeiture of his office, the three judges being among those who thought there was no irregularity. The majority of the commissioners thought at least that the killing was a grave scandal. And they all agreed that if the King treated the act as a forfeiture, he could only restore the archbishop by a pardon and dispensation, and restitution. The King accordingly in the end issued a pardon and dispensation, under the great seal, absolving the archbishop from all irregularity, scandal, or information. The case gave rise to great discussion, and many arguments were published on both sides. And the four new bishops, out of tenderness of conscience, refused to be consecrated by the unfortunate archbishop who had killed a man.

HONE'S TRIALS FOR BLASPHEMY.

In all the cases the prosecutions for blasphemy have been those where the defendant adopted mere abuse and scurrility, and never resorted to anything resembling argument or reasoning. The trial of Hone was a singular example of the power of juries, and the adjustment of the common law to circumstances. Hone was tried three times in succession for blasphemous libels, being parodies on the Catechism, Lord's Prayer, Ten Commandments, and the Athanasian Creed. The judges told the jury, in plain terms, that they were blasphemous libels. But the defendant, without any assistance of counsel, persuaded the jury that the object was not profane but political, namely, to destroy the flagrant abuse of sinecures and

other like corrupt practices; and moreover he contended, that even if the parodies were somewhat profane, yet many illustrious and pious persons before him had thought fit to use parodies also quite as bad. And each of the three juries in succession, after a few minutes' retirement, gave a verdict of not guilty.—Paterson's Lib. Press and Worship, 65.

THE VICAR AND PARISH CLERK.

Lord Stowell, the Ecclesiastical judge, used to relate that a vicar was once so wearied out with his parish clerk confining himself to the One Hundredth Psalm, that he remonstrated, and insisted upon a variety, which the man promised. But old habit proved too strong for him, the old words were as usual given out next Sunday, "All people that on earth do dwell." Upon this the vicar's temper could hold out no longer, and putting his head over the desk cried, "D—n all people that on earth do dwell!"—a very compendious form of anathema.—2 L. Brougham's Works, 72.

THE RINGING OF PARISH BELLS.

In a case before Lord Chancellor Macclesfield the plaintiffs lived at Hammersmith, very near the church, and were much disquieted by the ringing of a peal of bells at five o'clock every morning. They were about to remove to a distance, when it was agreed between them and the parish, at a vestry meeting, that, in consideration of their erecting a new cupola clock and bell, the five o'clock peal should not be rung during their lives or the life of the survivor. The new cupola clock and bell were erected, and for two years the agreement was observed by the parish; but at the end of that time, there being a revolution in Hammersmith, an order was made by the vestry that a peal should be rung every morning at five o'clock, according to ancient usage, and the churchwardens executed the order, the peal being rendered louder by the presence of the plaintiffs. The Lord Chancellor granted an injunction against the ringing of any bells at that hour, on the ground that there was a meritorious con-

sideration executed on the plaintiffs' side; that the churchwardens were a corporation, and might sell the bells, or silence them; that the ringing of bells at five in the morning did not seem to be of any use to others, though of very ill consequence to the plaintiff and his wife, Lady Arabella; and that the agreement which was beneficial to the parish, was binding on the parishioners and their successors.

CLERGY ENTERING PARLIAMENT.

After Horne Tooke's election, a statute was passed, in 1801, to put an end to doubt. It was then enacted, and is still law, that no one ordained as a priest or deacon in the Church of England, or being a minister of the Church of Scotland, should be capable of being elected a member of the House of Commons, and any such election should be void. And if, while being a member, he should take orders, then his seat should be vacant. And if one, while so disqualified, should sit or vote in the House, he forfeits £500 for every time he so acts. And he moreover is incapable thereafter of holding any benefice or office of profit under the Crown. This enactment, however, has nothing to restrain the dissenting clergy in any respect. A kindred enactment in 1836 related to municipal offices in England. No person in holy orders and, moreover, no regular minister of a dissenting congregation, can be a councillor or alderman of any municipal borough in England or Wales. It is, however, now enacted that a clergyman of the Church of England may, by a deed of relinquishment, divest himself of the clerical character, and thus he may avoid the penalties of these Acts, which disable him from entering Parliament or becoming an alderman; for he can then do as he pleases.—Paterson's Lib. Press and Worship, 482.

TOLERATION AMONG THE ANCIENTS.

The ancients were unsparing in their malignity towards heretics. Plato said that he who would not submit to the established religion must die, or suffer stripes and bonds, or privation of citizenship, or loss of property, or

exile; and Plato's doctrine ruled the world till the end of the seventeenth century. The Athenian law punished with death the introduction of new deities. Socrates was made to drink poison for this alleged crime, or at least for attacking the established religion. Anaxagoras was prosecuted by Cleon for impiety, in saying nothing more than that the sun was a fiery ball of iron. Anacharsis was put to death by his fellow-countrymen in Scythia, because, having been an intelligent traveller, after returning home he performed rites to foreign gods; and the same fate befell Scyles for performing rites to Bacchus and wearing Greek clothes. The works of Protagoras were publicly burnt, and himself banished, because he declared that he could not make out whether there were gods or not. Alcibiades was condemned and his goods confiscated for making light of the ceremonies of Ceres and Proserpine. The Romans also prohibited all new gods and new rites of worship. Suetonius says Tiberius zealously checked those practising foreign rites, and on that account Suetonius viewed him as a masterly governor. Paulus said such persons were banished or put to death because they disturbed weaker minds. Trajan thought that he who refused to sacrifice to the gods should be punished with death. The Romans also burnt magicians alive, and those aiding them were crucified. The Christians in their turn were, in the early centuries, punished as atheists, or as sorcerers, or magicians, or as given to superstition.—Paterson's *Lib. Press and Worship*, 517.

TOLERATION IN ENGLAND.

Historians have differed as to when dissent or nonconformity took possession of large bodies of men as a settled faith. Some say those who objected to transubstantiation under the bloody statute of Henry VIII. were the first. Others go back to the Lollards or to the martyrs in the early centuries. Others point to the Puritans under Elizabeth.

Mackintosh thought Sir H. Vane had obtained the earliest insight into the new light of toleration; others have pointed to Queen Elizabeth; others to Owen; others

to William III. Cromwell and Milton seemed to concede toleration to all but papists. Chillingworth was the great writer whose views were taken up and circulated by Hales, Owen, Jeremy Taylor, Burnet, Tillotson, Locke, and Temple. Even Locke and William III. and Lord Mansfield seemed to except Roman Catholics from the general rule of toleration, owing to their taint about the Papal supremacy and like doctrines. Hallam thought there had been no real toleration till the reign of George III.—Paterson's Lib. Press and Worship, 522.

NONCONFORMISTS AND THEIR FINES IN LONDON.

The city of London at one time took advantage of the Corporation Act of 1661 to raise money by appointing dissenters to the office of sheriff, and then fining them because they could not take the requisite oaths, and so could not serve the office. A bye-law of the Corporation, made in 1748, had imposed a fine of £600 on any "able and fit person" who, after being nominated, refused to serve. This being disputed by a dissenter named Evans as an illegal bye-law in a cause which had been taken by writ of error to the House of Lords, after three solemn arguments, Lord Mansfield laid down the law, that the Toleration Act rendered that which before was illegal now legal. That the dissenters' way of worship was permitted and allowed by that Act; that it was not only exempted from punishment, but rendered innocent and lawful. That, in fact, it was established, and it was put under the protection, and was not merely under the connivance of the law.

It was said that these accumulated fines, exacted in the city of London from persons refusing to qualify for the office of sheriff, were spent in building the new Mansion House. In six years the fines amounted to £15,000. The house was thence sometimes called the Palace of Intolerance.—Paterson's Lib. Press and Worship, 525.

DISSENTERS CHANGING THEIR CREED.

It is a general rule, that when the trust funds have been settled on a definite religious body, the congregation

cannot divert the property into a different channel, or apply them to a different sect, without an Act of Parliament. In a case in 1860 the trusts of a chapel were declared to be for the use of a congregation of Particular Baptists. The congregation became divided as to the doctrine of a strict and free communion. Since 1746 the congregation had acted on the doctrine of strict communion, but a majority, in 1860, resolved to act on a free communion. The court held, that whether the majority could make this change, depended on whether the doctrine was an essential and fundamental doctrine of that faith. According to the evidence it was proved not to be so; and therefore the court protected the majority in making the change desired by them.

Hence in the case of a dissenting congregation being desirous to change its creed and mode of worship, it is not a question of a majority or a minority of the congregation so desiring it; but it is a question whether their trust is specific enough to prevent it; and if so, then any one of the congregation can insist on preserving the original trust as it was. It is true that entire unanimity in a congregation may sometimes succeed; because then there would be no one having sufficient interest to interfere and set the law in motion against their acts.—Paterson's Lib. Press and Worship, 533.

STREET PREACHERS.

The Conventicle Act of Charles II. put heavy penalties on those who preached in fields and corners without a license and a ritual, but that act was repealed after 150 years' experience, in 1812; and there has been no practical restriction on street preaching since the latter date. It is true that inasmuch as these preachers are often in the eye of the law trespassers on land, they may occasionally be subject to an action at law, when they, without permission, exercise their gifts in places which are not highways, and over which the freeholder has, or may resume, means of possession. And when they collect crowds on highways in such positions and times as to create a sensible obstruction to those who are using the highway, they are liable to be summoned, under the

Highway and Turnpike Act, for the obstruction so caused, as was noticed on an earlier page, as to the holding of public meetings. But though they may, when so summoned, be fined a small sum, yet, as a general rule, they cannot be arrested summarily by constables or other persons, as is too often attempted or threatened, unless some local act in force at the place in question expressly authorizes this to be done. And courts and magistrates can judge of the very temporary character of the obstruction, if any, which they usually cause, and can estimate how seldom it is substantial or worthy of reprehension; and they have it in their discretion to discourage frivolous interferences with an employment which can seldom do harm, and often is of striking advantage to such casual audiences as can be collected. And this treatment is that which is most becoming in a country whose institutions are stable enough to withstand all the random shocks which can be caused by free voices from the crowd on any subject whatever.—Paterson's Lib. Press and Worship, 550.

CHAPTER VII.

ABOUT THE SOVEREIGN, GOVERNMENT, PARLIAMENT, AND PUBLIC RIGHTS.

PARLIAMENT ASKS QUEEN ELIZABETH TO MARRY.

After a conference between the two Houses, in 1565, the Lords resolved upon an address to her Majesty, to be presented by Lord Keeper Bacon, and the address bears strong marks of having been prepared by the Lord Keeper himself. It is said to have been delivered by him to her Majesty in Parliament, and she seems to have come down to the House of Lords to receive it on the throne. It is very long, and after the Lord Keeper's manner; but a few extracts from it are amusing. After a tiresome preface, he says, "The Lords petition, 1stly, that it would please your Majesty to dispose yourself to marry when it shall please you, with whom it shall please you, and as soon as it shall please you: 2ndly, that some limitation may be made how the imperial crown of this realm may remain if God calls your Highness without heir of your body (which our Lord defend), so as these lords and nobles, and other your subjects then living, may sufficiently understand to whom they owe allegiance . . . What but want of a successor known, made an end of so great an empire as Alexander the Great did leave at his death? God, your Highness knoweth, by the course of Scriptures, hath declared succession, and having children, to be one of the principal benedictions in this life; and, on the contrary, he hath pronounced contrarywise; and therefore Abraham prayed to God for issue; fearing that Eliezer, his steward, should have been his heir, and had promise that kings should proceed of his body. Hannah, the mother of Samuel, prayed to God with tears for

issue; and Elizabeth (whose name your Majesty beareth), mother to John the Baptist, was joyous when God had blessed her with fruit, accounting herself thereby to be delivered from reproach." Bacon's harangue being at last brought to a close, the Queen returned a short answer, which has all the appearance of being unpremeditated. She ended a few sentences with this: "Though I can think it best for a private woman never to trade in that kind of life, yet I do strive with myself not to think it meet for a prince, and if I can bend my liking to your need, I will not resist such a mind." After a few evasive generalities she withdrew, and the lords declared themselves contented.—1 Parl. Hist., 708.

COKE'S GUSHING ELOQUENCE ABOUT QUEEN ELIZABETH.

Coke more than once lavishes his praises on Elizabeth. "Of this Queen I may say that as the rose is the queen of flowers, and smelleth more sweetly when it is plucked from the branch, so I may say and justify that she by just desert was the queen of queens, and of kings also, for religion, piety, magnanimity, and justice, who now, by remembrance thereof, since Almighty God gathered her to himself, is of greater honour and renown than when she was living in this world. You cannot question what rose I mean, for take the red or the white, she was not only by royal descent and inherent birthright, but by roseal beauty, also heir to both."—Coke's 1st Inst. Pref.

IF THE SOVEREIGN BE A COMPETENT WITNESS.

Charles I. rebuked the House of Parliament, in 1626, for impeaching Buckingham, and other things. A curious constitutional question arose a few days after, which very much perplexed the Lord Keeper, and remains to this day undetermined. The Earl of Bristol, in his defence, relied upon communications which had passed between him and the King, when Prince, at Madrid, and, to prove these, proposed to call the King himself as a witness. The Lord Keeper gave it as his opinion, that the sovereign cannot be examined in any judicial proceeding under an oath or without an oath, as he is the fountain of justice, and since no wrong may be imputed

to him, the evidence would be without temporal sanction. On the other side, they pointed out the hardship of an innocent man being deprived of his defence by the heir to the crown becoming king, and urged that substantial justice ought to be paramount to all technical rules.

A proposal was made which could not be resisted, that the judges should be consulted, and two questions were propounded for their consideration: 1. Whether, in case of treason or felony, the King's testimony was to be admitted or not? 2. "Whether words spoken to the Prince, who is after King, makes any alteration in this case?" But when the judges met on a subsequent day, it was declared by the Lord Chief Justice that his Majesty, by his Attorney-General, had informed them that, "not being able to discern the consequence which might happen to the prejudice of his crown from these questions, his pleasure was that they should forbear to give an answer thereto."

Lord Campbell observed upon this proceeding that "the sovereign, if so pleased, might be examined as a witness in any case, civil or criminal, but must be sworn, although there would be no temporal sanction to the oath. The simple certificate of King James I., as to what had passed in his hearing, was received as evidence in the Court of Chancery in a case of *Albigny v. Clifford*, Hob., 213. But Willes, C.B., stated that in every other case the King's certificate had been refused. In the *Berkeley Peerage* case, before the House of Lords in 1811, there was an intention of calling George IV., then Prince Regent, as a witness, and I believe the general opinion was that he might have been examined, but not without being sworn."—2 Camp. Chanc., 511.

BISHOPS AND PEERS KISSING THE KING AT A CORONATION.

King William IV. did a droll thing the other day (August, 1831). The ceremonial of the coronation was taken down to him for approval. The homage is first done by the spiritual peers, with the archbishop at their head. The first of each class (the archbishop for the spiritual) says the words, and then they all kiss his cheek in succession. The King said he would not be kissed by

the bishops, and ordered that part to be struck out. As I expected, the prelates would not stand it. The archbishops remonstrated; the King knocked under, and so he must undergo the salute of the spiritual as well as of the temporal lords.—Greville's Mem.

A SOVEREIGN CURED OF LUNACY.

The speculations about a regency were almost miraculously put an end to in 1801 by a "prescription" of the new Prime Minister, Addington, in a literal, not a figurative sense. Being the son of a medical man, he had heard from his father that such irritations as now disturbed the nerves of his Majesty, might be allayed by the patient's head reposing on a pillow of hops. The recipe was accordingly tried, sleep was induced, next morning his Majesty was better, and in a few days, with proper precautions, he could be produced in public. It was this cure which fixed upon Mr. Addington the nickname of "the Doctor," and gave rise to Canning's jest against him as being one of the "Medici."—6 Camp. Chanc., 317.

A SOVEREIGN'S OPINION OF A DEAD CHANCELLOR.

The following anecdote has been too widely circulated to be suppressed, and it seems to rest on undoubted authority. Intelligence being carried to George III. early next morning of the sudden death of his "friend," Lord Loughborough, the monarch, with characteristic circumspection, interrogated the messenger as to whether this might not be a false report, as he had seen the Earl of Rosslyn himself so recently in perfect health, and the messenger having declared that the Earl had certainly died during the night, of gout in the stomach, his Majesty was graciously pleased to exclaim, "Then he has not left a greater knave behind him in my dominions."

THE SOVEREIGN'S RIGHT AS GUARDIAN OF HIS GRAND-CHILDREN.

Lord C. J. Parker, once having assembled all the judges at his chambers, in Serjeant's Inn, read the Lord Chan-

cellor's letter, and intimated his own opinion strongly to be, that the whole of the question then agitated as to the King's control over his grandchildren was to be answered absolutely in the affirmative. He was able to bring forward nothing in support of the grandfather's right to have the care of his grandchildren, except that the law of God and the law of nature are *rather* with the grandfather. He prevailed upon nine of the judges to agree with him; but two, Baron Price and Baron Eyre, the Prince of Wales' Chancellor, differed, returning for answer, that though the approbation of the marriages of the royal family belonged to the King, there was no instance where a marriage had been treated by the King for any of the royal family, without the consent of the father, and that the case of the Prince of Wales was no exception to the general rule, by which the father has a right to the custody and education of his children. George I. was exceedingly delighted with having so large a majority of the judges in his favour, and he ordered their opinions to be recorded in the books of the Privy Council, as a warrant for the authority which he was resolved to maintain. He attributed this triumph over his son mainly to the exertions of Lord Chief Justice Parker, which may possibly account for the transfer of the great seal which so speedily followed.

Things remained on this footing till the year 1772, when the Royal Marriage Act passed, 12 Geo. 3, c. 2. Some legislation on the subject was probably necessary; but the provisions of that Act produced serious evils, and seemed afterwards to require modification.—4 Camp. Chanc., 521.

MAKING A FOREIGN KING AN OUTLAW.

Selden, in his "Table Talk," said, "The King of Spain was outlawed in Westminster Hall, I being of counsel against him. A merchant had recovered costs against him in a suit, which, because he could not get, we advised to have him outlawed for not appearing, and so he was. As soon as Gondamar heard that, he presently sent the money, by reason if his Majesty had been outlawed he could not have had the benefit of the law, which would

have been very prejudicial, there being then many suits depending betwixt the King of Spain and our English merchants."

A SOVEREIGN GIVING AWAY PART OF HIS KINGDOM.

In 1783, on the debate on the Preliminaries of Peace, Lord Chancellor Thurlow followed Lord Loughborough, who, having become a Foxite, had in a long and elaborate speech attacked the terms of the treaty; and particularly in reference to the article agreeing to the cession of the Floridas; denied the power of the Crown, without an Act of Parliament, to alienate a portion of the British Empire, and to transfer the allegiance of British subjects to a foreign state. Thurlow's answer is supposed to have settled that great constitutional question; but it has been said since to be very unsatisfactory, for, as usual, he dealt in sarcasm and assertion, not in reasoning or authority; and he did not define or limit the power he contended for, so as to exclude from its exercise the cession of the Isle of Wight, or the garrison of Portsmouth. He said he never heard the matter doubted, and so assuming it, he concluded thus: "In my opinion it is safer to stick to the process by which we arrive at the conclusion that two and two make four, than to suffer your understandings to be warped by the fashionable logic which delights in words, and which strives rather to confound what is plain, than to unravel what is intricate." The Lord Chancellor, as is remarked by Lord Campbell, might just as well, after the manner of Lord Peter, in one sentence have affirmed with an oath that it was so, and uttered an imprecation on all who differed from him.—5 Camp. Chanc., 551.

HOW FAR JUDGES ARE REMOVABLE BY A NEW SOVEREIGN.

When the first parliament of George III. assembled, in 1760, a royal message being delivered, recommending that the judges should not be removable on a demise of the Crown, Lord Hardwicke moved the address of thanks, and he delivered a very courtly speech, most extravagantly over-praising that measure, and creating the delusion

which still prevails that till then the judges held during pleasure. In truth, by the Act of Settlement, their commissions were "*quamdiu se bene gesserint*;" and although, by a misconstruction of that Act, contrary to the maxim that "the King never dies," the appointment was held only during the natural life of the reigning sovereign, only one judge was removed on the death of George I., not one on the death of George II., and no minister at any time coming would have ventured to remove a competent judge on the commencement of a new reign. At any rate, this boon from his majesty was entirely at the expense of his successor. Nevertheless, Lord Hardwicke represented the measure as of infinite importance to the impartial administration of justice, and to the rights and liberties of the people.

Sir Michael Foster was clearly of opinion that after the judges were required by the legislature to be appointed during good behaviour, they could only be removed by joint address of both Houses of Parliament.—5 Camp. Chanc., 150.

HOW LORD CHANCELLOR THURLOW KEPT THE KING'S CONSCIENCE.

Lord Eldon used to relate the following anecdote: Once, when the mind of George III. was supposed to be not very strong, I took down to Kew some Bills for his assent, and I placed on a paper the titles and the effect of them. The King, being perhaps suspicious that my coming down might be to judge of his competence for public business, as I was reading over the titles of the different Acts of Parliament, he interrupted me and said: "You are not acting correctly, you should do one of two things; either bring me down the Acts for my perusal, or say, as Thurlow once said to me on a like occasion—having read several he stopped and said, 'It is all d——d nonsense trying to make you understand them, and you had better consent to them at once.'"

A CHANCELLOR WRITING TO THE KING FAMILIARLY.

Lord Chancellor Brougham visited Scotland in 1834, and was made much of by all sorts of people. One day

at Inverness, as usual, modestly accounting for his enthusiastic reception from "the circumstance that he had the honour of serving a monarch who reigned in the hearts of his subjects," he said: "To find that he lives in the hearts of his loyal subjects inhabiting this ancient and important capital of the Highlands, as it has afforded me pure and unmixed satisfaction, will, I am confident, be so received by his Majesty when I tell him (*as I will do by this night's post*) of such a gratifying manifestation." Then, referring to the complaints against the Government for not "going ahead," he said: "My own opinion is, that we have done too much rather than too little. By passing the new Poor Law, were the Government to do nothing more for ten years to come, they would have deserved well of the country. If we did little in the last session, I fear we shall do less in the next. But what we do will be done well, because it will be done carefully."—8 Camp. Chanc., 451.

A CHANCELLOR GOING ABROAD WITHOUT THE SOVEREIGN'S LEAVE.

It was said that his Majesty William IV. had declared to those with whom he conversed more freely, that "He could not account for Chancellor Brougham clandestinely running away with the Great Seal, beyond the jurisdiction of the Court of Chancery, except upon the supposition that he was out of his mind, of which there had for some time been strong symptoms." Lord Campbell observes, "I certainly know that William IV. had a strong opinion that no English judge could lawfully go beyond the realm of England without the express personal permission of the King. He once caused Lord Abinger, when Chief Baron of the Exchequer, to be reprimanded for doing so; and this doctrine had been so traditionally established at Court, that when I myself became a judge, I did not venture upon a tour to Italy till I had first obtained the Queen's consent, although I hold it to be quite clear that there is no such prerogative. A judge may go where he likes, either in or out of the realm, without any royal consent, if he does not neglect his judicial duties; and if he does, the consent of the Crown would be no excuse for him."—8 Camp. Chanc., 454.

THE KING OUGHT NOT TO MAKE NEW LAWS.

The consulted judges all concurred in this answer, drawn by Coke: "That the King, by his proclamation, cannot create any offence which was not an offence before, for then he may alter the law of the land by his proclamation in a high point; for if he may create an offence where none is, upon that ensues fine and imprisonment. Also the law of England is divided into three parts: common law, statute law, and custom; but the King's proclamation is none of them. Also, *malum aut est malum in se, aut prohibitum*; that which is against common law is *malum in se, malum prohibitum* is such an offence as is prohibited by Act of Parliament. Also, it was resolved, that the King hath no prerogative but that which the law of the land allows him. But the King, for prevention of offences, may admonish his subjects by proclamation, that they keep the laws, and do not offend them, upon punishment to be inflicted by the law."

THE KING SITTING AS JUDGE.

James I. is said to have tried his hand as a judge, but to have been so much perplexed when he had heard both sides, that he abandoned the trade in despair, saying, "I could get on very well hearing one side only, but when both sides have been heard, by my soul, I know not which is right." The terror of Coke, however, was the true reason for abandoning the scheme; for, if it had not thus been boldly denounced as illegal, by the aid of sycophants it would have proceeded, and much injustice would have been perpetrated.

A QUEEN'S WISH TO ENLARGE HER GARDENS.

Caroline, Queen of George II., had a fancy to shut up St. James's Park, and make a garden of it for the palace, and asked Sir Robert Walpole what might be the expense of it. "Oh a trifle, madam," said he. "A trifle!" replied the Queen; "I know it must be pretty expensive; but I wish you would tell me as near as you can guess." "Why, madam," replied the minister, "I believe the whole

will cost but three crowns." Her Majesty at once perceived the hidden meaning of his three crowns, and said: "Sir Robert, I will think no more of it."

THE KING'S SATIRE ON A JUDGE FOR LOSS OF TEMPER.

Such was the general opinion respecting the infirmity of Lord Kenyon's temper, that the following anecdote was circulated and believed, although the epigrammatic point and the rudeness which it imputes to George III. were equally at variance with the character of that royal personage: "Lord Kenyon being at the levee soon after an extraordinary explosion of ill-humour in the Court of King's Bench, his Majesty said to him, 'My Lord Chief Justice, I hear that you have lost your temper, and from my great regard for you I am very glad to hear it, for I hope you will find a better one.'"

THE LORD MAYOR'S SPIRITED ADDRESS TO THE KING.

During the heat of the disputes about the Middlesex election and John Wilkes, in 1770, the citizens of London sent the Sheriffs and city remembrancer to present a remonstrance to the King. The King was advised to put off the first appointment. On the second appointment the courtiers kept the deputation waiting three hours, and the King, after receiving the address soliciting a further appointment, sent word to the deputation that they must first state how the address was authenticated. Next day the Sheriffs went and sought an audience of the King, saying they had a right to an audience, and declining to state to the Secretaries of State the subject of the message. The King's advisers, after debating the matter, at last agreed to advise the King to receive them. The remonstrance, which was spirited, was delivered by the Lord Mayor, Aldermen, Sheriffs, and fifty-three Common Councilmen. Parliament agreed with the King as to the disrespectful tone of the address. The citizens, nothing daunted, went with a second remonstrance, still more energetic, and urging the King to dissolve Parliament. The King read an answer to the effect that he could not assent to their address. The Lord Mayor Beckford then and there delivered to the King an unpremeditated reply,

which, after stating the concern of the citizens, concluded thus: "Permit me, sire, further to observe that whoever has already dared, or shall hereafter endeavour, by false insinuations and suggestions, to alienate your Majesty's affections from your loyal subjects in general, and from the City of London in particular, and to withdraw your confidence in and regard for your people, is an enemy to your Majesty's person and family, a violator of the public peace, and a betrayer of our happy constitution as it was established at the glorious revolution."

The dignity and firmness of this reply greatly pleased the citizens. Junius said of it: "The noble spirit of the metropolis is the life blood of the state, collected at the heart; from that point it circulates, with health and vigour, through every artery of the constitution."

WILKES AND GENERAL WARRANTS.

When Lord Halifax, the Secretary of State in 1763, was anxious to discover the author of a seditious libel in the *North Briton*, No. 45, he issued a general warrant to his messengers to search for the offender. No individual being named in the warrant, forty-nine persons were arrested, and, among others, Dryden Leach, printer, was taken from his bed at night, his papers seized, and his journeymen and servants also apprehended. Wilkes, having also afterwards been arrested on the same ground, observing that his name was not mentioned in the warrant, said it was "a ridiculous warrant against the whole English nation," and refused to obey it. He was accordingly arrested and committed to the Tower, while his papers were ransacked. The printers and Wilkes then brought actions for damages. Leach obtained £400 damages against the messengers. Wilkes recovered £1,000 against Wood, the Under Secretary.

Since that time it has never been doubted, that no person can be legally arrested except under a warrant signed by justices or other legal authority, expressly naming the person arrested; though if the name were entirely unknown and unascertainable, then no name need be specified, if the next best means of identification be given —2 Paterson's Lib. Subj., 130.

THE OLD MODE OF TAXATION CALLED BENEVOLENCE.

Where the King thought of raising money, he used, in early times, to call it a Benevolence, though others called it a Malevolence. When Edward IV. called together his wealthy subjects, and told them his purpose of levying war for their honour and safety, he demanded of each a certain levy. Many cheerfully gave. Among the rest was a widow of very good estate, of whom the King merely asked what she would willingly give him for the maintenance of his wars. "By my faith," quoth she, "for your lovely countenance's sake you shall have twenty pounds," which was more than the King expected. The King thanked her, and vouchsafed to kiss her, upon which she presently swore he should have twenty pounds more.

THE KING ON A LORD CHANCELLOR'S ELOPEMENT.

George III. was one day standing between Lord Eldon, his Chancellor, and the Archbishop of Canterbury, Dr. Sutton. After a moment's pause in the conversation, the King said, gravely, "I am now in a position which, probably, no European king ever occupied before." Lord Eldon begged his Majesty to explain himself. "I am standing," said the king, in the same grave tone, "between the head of the Church, and the head of the Law, in my kingdom—men who ought to be the patterns of morality, but who have both been guilty of the greatest immorality." The two lords, learned and reverend, looked shocked and astonished. Lord Eldon respectfully begged to know to what his Majesty alluded. "Why, my lords," exclaimed the King, in a tone of exquisite banter, "did you not both run away with your wives?" —I Law and Lawyers, 61.

TRIAL OF PEERS AND THEIR IMPEACHMENT.

On the trial of a peer for treason or felony, either before the House of Lords, or before selected peers when Parliament is not sitting, the presidentship of the Lord Chancellor is suspended, and a Lord High Steward is especially appointed *pro hac vice* by the Crown. This arose from the Lord Chancellor, in early times, being almost always an ecclesiastic, who could not meddle in

matters of blood. Since the Chancellor has been a layman, he has generally been nominated Lord High Steward; but then he becomes "his grace," and presides in a different capacity. On the impeachment of commoners (which can only be for high crimes and misdemeanours) he presides as in the ordinary business of the House.

PEERS PRESENTED AT COURT.

During the year 1710, Lord Chancellor Harcourt was said to have got into a scrape at court by presenting there a batch of Scotch representative peers to her Majesty Queen Anne, the rule being, that a peer could only be presented by a peer. The Earl of Rochester, the Queen's uncle, the president of the council, pointed out the enormity of which he had been guilty; but the ex-Chancellor, Lord Cowper, good-naturedly came to his rescue, and insisted that, this being a question of precedence, and the Lord Keeper, though a commoner, having precedence of all peers, there had been no breach of etiquette. The most absurd rule of this sort still subsisting is, that upon a division in the House of Lords, the tellers on opposite sides must be of equal rank. A proposal that a baron should tell against a duke, or even against a viscount, would be received with horror, although all there are supposed to be *pares*.—4 Camp. Chanc., 459.

MAKING A PEER.

The course of making out a patent of peerage is, that upon warrant under the sign manual, and countersigned by a Secretary of State, a Bill is prepared on parchment by the Attorney-General, which is a draft of the grant. This being superscribed by the sovereign, passes under the privy seal, and then comes the patent under the great seal, before which the peerage is not completed, although on kissing hands after the warrant, a member of the House of Commons about to be ennobled vacates his seat. Anciently a barony was created without patent, by a writ of summons to Parliament, but was not acquired so as to descend to heirs till the baron had taken his seat in the House of Peers. Such a peerage descends to heirs female as well as male, and is usually called "a barony in fee."

THE LORD CHANCELLOR'S STYLE OF SPEAKING.

Lord Chesterfield, a master of dignified style, observed on Lord Chancellors as follows: "The nature of our constitution makes eloquence more useful and more necessary in this country than in any other in Europe. A certain degree of good sense and knowledge is requisite for that as well as for everything else; but beyond that, the purity of diction, the elegance of style, the harmony of periods, a pleasing elocution, and a graceful action, are the things which a public speaker should attend to most; because his audience does, and understands them the best, or rather, indeed, understands little else. The late Lord Chancellor Cowper's strength as an orator lay by no means in his reasonings, for very often he hazarded very weak ones. But such was the purity and elegance of his style, such the propriety and charm of his elocution, and such the gracefulness of his action, that he never spoke without universal applause. The ears and the eyes gave him up the hearts and the understandings of the audience."—*Chesterf. Letters*, No. 205.

PEERS MADE BY THE DOZEN.

Allen Bathurst, the long-lived father of Lord Chancellor Bathurst, having studied at Trinity College, Cambridge, under the then Master, Dean Bathurst, his uncle, was returned to Parliament, when hardly of age, for the borough of Cirencester, and became a partizan of the Tories. As a reward for his services, he was raised to the peerage; being one of the batch of twelve made in 1711, to support the peace of Utrecht. When they were introduced into the House of Lords they were asked, in the legal phraseology addressed to a jury, "if they would speak by their foreman?"

PEERS AND THEIR TRIAL FOR CRIME.

By 4 and 5 Vict., c. 22, passed after the trial of Lord Cardigan, it is enacted that when an indictment is found against a peer, he shall have no privilege except to

be tried by his peers, and that upon conviction he shall be liable to the same punishment as the rest of her Majesty's subjects. No invidious distinction of the peerage now exists except the action of *Scandalum Magnatum*. Lord Campbell says he intended to include the abolition of that action in his libel bill; but he found the manner of doing it very difficult, for the action rests on statutes which merely forbid the telling of lies, and the spreading of false reports of great men, which it would appear rather absurd to repeal.—5 Camp. Chanc., 516.

THE ACTION OF SCANDALUM MAGNATUM.

The courts seem to have applied the rules of the common law to the enforcement of this remedy somewhat more liberally than modern notions would allow. Lord Dorchester, in 1660, got a verdict against the defendant for saying of him, "He is no more to be valued than the black dog which lies there." Lord Pembroke was held entitled to sue a man for saying, "He was a pitiful fellow, and no man would take his word for twopence." It was also held actionable to say that the Lord Chief Baron was deaf of one ear, as this was apparently assumed to have a deep symbolical meaning. Lord Townsend, in 1676, brought an action against Dr. Hughes for saying, "He was an unworthy man, and acted against law and reason." The jury gave a verdict for £4,000, and the court held this was no ground for a new trial, as they could not set a value on the plaintiff's honour. All these cases were, however, thrown into the shade a few years later. The Duke of York, in 1682, obtained a verdict of £100,000 against Pilkington, for saying in the Guildhall, at a meeting of aldermen of the city of London, that "the Duke had burned the city and was now come to cut the citizens' throats." The defendant chose to have the trial in Hertfordshire, and the jury, who were all gentlemen of quality, in a quarter of an hour found their verdict. A verdict for the same amount was returned in another action by the Duke against Colt; and even against Titus Oates, who, however, made no defence, they were equally liberal. The Earl of

Macclesfield, in 1686, sued Starkey for saying, that the Earl was a seditious addresser, and obtained a verdict of £10,000. And the same in an action of Duke of Ormond *v.* Hatherington. During the last two centuries peers and great men have usually contented themselves with ordinary remedies, and especially with the remedy of criminal information.—Paterson's Lib. Press and Worship, 182.

PEERS CALLED BY EACH OTHER, NOBLE FRIENDS.

It was said by a peer who was present at a certain debate, that Lord Grey having called Lord Eldon on one occasion his "noble and learned friend," Lord Eldon interrupted him, and said, "How can any one call me friend who charges me with such villainy?" In the midst of the badgering from Earl Grey about the King, Lord Eldon thought himself very ill-used, not only by the Opposition, but by his old colleagues, and by the royal family. Thus he wrote to his brother, Sir William: "I am hardly in my right mind upon what is passing, and when I am attacked day by day, and every man who was with me in Administration in 1804 is obstinately holding silence, and the whole royal family, whose protestations of gratitude my boxes teem with, are among my enemies, God help me, if I had not the means of proving I have nothing to fear."—7 Camp. Chanc., 260.

THE PEER AND THE DEVIL'S COUNTENANCE.

Moore says, Speaker Abercromby once talked of Erskine's speech in defence of Peter Pindar for a libel on Lord Lonsdale, in which that wit had compared Lord Lonsdale to the devil. Erskine dwelt on the grandeur of the devil, as described by Milton, and insisted that it was rather he that should be displeased at being compared to Lord Lonsdale. "The devil," said Lord Lansdowne, "was always a favourite theme with Erskine, and he had once heard him say that he looked upon him as a great celestial statesman out of place."

TWO PEERS OF THE SAME NAME.

Miss Pulteney, the heiress of the rival of Sir Robert Walpole, had been created Baroness Bath, there being a Marquess of Bath of another family existing. Lord Radnor made a motion in the House of Lords against this patent, contending that it was unconstitutional and illegal to create two peers with the same title, and that great inconvenience would arise from it, as in their lordships' proceedings "Bath" might often appear opposed to "Bath." Lord Loughborough said, "My lords, there have sat in this House, at the same time, Lords Grey, Lords Percy, and Lords Howard, without end. Besides, in this case, there is a sure way of preventing the future antagonism which haunts the imagination of the noble earl, for the heir apparent of the Marquess being a bachelor, he may marry the young and beautiful baroness, and then Bath will be merged in Bath!" Lord Radnor had only one peer to divide with him.—30 Parl. Hist., 574.

SCOTCH PEERS MADE BRITISH PEERS.

Lord Loughborough, before he became Lord Chancellor, gained a victory on a question not considered a party one, viz., "Whether Scotch representative peers being created British peers, they should continue to sit as part of the sixteen, or their place should be supplied by a new election." Upon a very able argument of his against the Chancellor, the House of Lords determined, by a majority of 52 to 38, "That the Earl of Abercorn who had been chosen to be of the sixteen peers by the treaty of Union, to represent the peerage of Scotland in Parliament, being created Viscount Hamilton, by letters patent under the Great Seal of Great Britain, doth thereby cease to act as a representative of the peerage of Scotland."

PEERS ALARMED BY THE PREMIER'S ASSASSINATION.

Lord Eldon was sitting on the woolsack when intelligence of Mr. Percival, the Prime Minister, being shot was brought to the House of Lords. Apprehending that

there might be a plot to assassinate all the ministers, he said, "I have just been informed of a most melancholy and atrocious event, which has happened in the lobby of the other House. In this situation, I feel it my duty to apprise your lordships that I shall take care to give the proper directions to the officers that none go out of the doors of this House of Parliament till we have been fully satisfied that they have not the means of doing further mischief." Orders were accordingly given to search all strangers below the bar for concealed firearms, but it was not carried into execution; and the House, having moved an address to the Regent, expressing their horror at the crime committed, and praying that he would take proper steps for bringing the offender to justice, adjourned. Bellingham, the assassin, had been in the Court of Chancery the same morning, and was supposed to have looked fiercely at the Chancellor, but seems to have intended no violence at that time. The chief object of his resentment was Lord G. Leveson Gower (afterwards Earl Granville), who had been ambassador in Russia when he suffered some supposed grievance there, for which he made the Prime Minister responsible. The shot was fired about five o'clock on Monday afternoon, May 11th, the trial took place on Friday, the 15th, and before nine o'clock in the morning of the Monday following, Bellingham's dead body was lying in the dissecting-room of Surgeons' Hall. He had formerly been confined in a mad-house, and several of his family had been afflicted with madness. Romilly says, "No person can have heard what the conduct and demeanour of this man has been since he committed the crime, or can have read his defence, without being satisfied he is mad; but it is a species of madness which, probably for the security of mankind, ought not to exempt a man from being answerable for his actions."—Romilly's Life.

ONE PEER CHALLENGING ANOTHER PEER TO FIGHT.

A private affair of honour, wholly unconnected with any parliamentary proceeding, was brought before the House by Lord Chancellor Thurlow as a breach of privilege. The Earl of Pomfret, erroneously supposing that a game-keeper, whom he had discharged, had been

countenanced by the Duke of Grafton, wrote some very intemperate letters to his grace, and insisted on fighting him either with sword or pistol. Lord Thurlow, on the rumour of what had happened, moved that they should attend in their places in the House, and both parties being heard, it was resolved that the behaviour of the Duke of Grafton had been highly laudable and meritorious: and Lord Pomfret, being made to kneel at the bar, was informed that he had been guilty of a high contempt of the House. Afterwards the Lord Chancellor, with three-cocked hat on head, administered to him a thundering reprimand. Now-a-days, the House would refuse to take cognizance of such a quarrel. The supposed breach of privilege would be the same if the challenger were a commoner, although this circumstance would render the interference more preposterous.—22 Parl. Hist., 855.

A LORD CHANCELLOR BESEECHING THE HOUSE OF LORDS.

Lord Campbell says of Lord Brougham's great speech on the Reform Bill, that he was partly inspired by draughts of mulled port, imbibed by him very copiously towards the conclusion of the four hours during which he was on his legs or on his knees. Lord Brougham thus concluded: "Among the awful considerations that now bow down my mind, there is one which stands pre-eminent above the rest. You are the highest judicature in the realm; you sit here as judges, and decide all causes, civil and criminal, without appeal. It is a judge's first duty never to pronounce sentence in the most trifling case, without a hearing. Will you make this the exception? Are you really prepared to determine, but not to hear, the mighty cause upon which a nation's hopes and fears hang? You are! Then beware of your decision! Rouse not, I beseech you, a peace-loving but a resolute people. Do not alienate from your body the affections of a whole empire. As your friend, as the friend of my order, as the friend of my country, as the faithful servant of my sovereign, I counsel you to assist with your utmost efforts in preserving the peace, and upholding and perpetuating the constitution. Therefore I pray and exhort

you not to reject this measure. By all you hold most dear, by all the ties that bind every one of us to our common order, and our common country, I solemnly adjure you, I warn you, I implore you, yea, on my bended knees (he kneels) I supplicate you, reject not this Bill!" He continued for some time as if in prayer; but his friends, alarmed for him lest he should be suffering from the effects of the mulled port, picked him up and placed him safely on the woolsack. Like Burke's famous dagger scene in the House of Commons, this prostration was a failure. So unsuited was it to the spectators and to the actor, that it produced a sensation of ridicule, and considerably impaired the effect of a speech displaying wonderful powers of memory and of intellect, although hardly deserving the epithets bestowed upon it by the *Times*, "overpowering, matchless, and immortal." — 8 Camp. Chanc., 399.

SUMMONS TO SIT AS A PEER.

The doctrine that "summons and sitting constitute an hereditary peerage," is now fully established, and has often been acted upon; but in early times the King seems to have exercised the prerogative of summoning any knight to sit in the House of Lords for a single Parliament, without incurring the obligation of again summoning him, or of summoning his descendants after his death.

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A PEER LAMPOONING HIS ATTORNEY.

The Earl of Abingdon, having quarrelled with his attorney, delivered a most calumnious speech against him in the House of Lords, and then published it in a newspaper. The attorney indicted him for publishing the libel. The trial coming on before Lord Kenyon, at Westminster, the noble defendant appeared in court as his own counsel. He modestly abstained from claiming to sit on the bench with the Chief Justice, but, remaining at the bar, he strenuously insisted on his right to be covered, because the Chief Justice and he were both peers, and entitled to the same privileges. *Lord Kenyon* said, "I do not sit on this seat as a peer; but being

assigned by our lord the King, as his Chief Justice, to hold pleas before him, out of respect to the sovereign of these realms, and to the sovereignty of the law, the noble earl must be uncovered."

POST OFFICE LETTERS MAY BE OPENED BY A SECRETARY OF STATE.

Though the servants of the Post Office and third parties are punishable for opening or tampering with letters while in the custody of the Post Office, an exception has always been maintained. This exception is, that any letter may be opened, detained, or delayed in obedience to an express warrant in writing under the hand of a Secretary of State. From the first the Government had exercised its discretion in this matter, and retained in its hands the power of opening any private letter at any time. And it appears to have been, a century ago, the common complaint of leading statesmen, that their political opponents made a practice of opening their letters when they had the power. And however arbitrary this may seem, still on full investigation it has been deemed safer to leave an uncontrolled discretion, as in many other instances is done, confiding to a functionary not likely to abuse it, rather than abandon what on some great emergency may prove a slight assistance in thwarting seditious or illegal machinations. —Paterson's Lib. Press, 60.

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IRISH SPEAKER AND LORD CHANCELLOR IN COLLISION.

During certain political feuds, about 1695, the Irish Lord Chancellor, Sir Charles Porter, after succeeding in defending himself against an impeachment by the Commons, was proceeding home late at night in his lumbering coach. In a street called Essex Street, near the Four Courts, the Chancellor's coachman had to pass another carriage immediately in front, which was the coach of the Speaker, a violent enemy of the Lord Chancellor. A strong glare of light helped the Speaker to discover whose coach it was that was almost in collision with his own, when he peremptorily called on the Chancellor's

coachman to keep back. This mandate being unheeded, the Speaker, in his robes, darted from his coach and, disregarding danger and dirt, seized the reins of the Chancellor's horses, and brought the horses on their haunches. He then ordered his mace to be brought out of his own coach, and thrust it before the Chancellor's coachman, declaring that he would be run down by no man, and would justify what he did. The Chancellor on seeing the state of things wisely abstained from further attempts to get precedence.—I O'Flanagan's Irish Chanc., 456.

IRISH KNIGHTS MADE BY LORD LIEUTENANT.

A meeting of the English judges was held in 1823, at Chief Justice Dallas's house, to consider the point whether the Lord Lieutenant of Ireland had the same power after the Union as he had before to confer the honour of knighthood. They were of opinion unanimously that the Act of Union did not deprive him of his former privilege, and that the knights created by him were knights all the world over. It was made a matter of speculation how such a time should have elapsed before mooted the question, and some people said the doubt was started to mortify Lady Morgan, whose husband had been thus knighted, and whose writings offended the ministers.

IRISH BAR OPPOSED TO THE UNION WITH GREAT BRITAIN.

In 1798, when the Union between Ireland and Great Britain was canvassed, the Irish bar held a meeting in Dublin to consider it. One of the speakers, Thomas Goold, was said to have made the most forcible speech against the proposed Union, of which the following was the peroration:—

“There are 40,000 British troops in Ireland, and with 40,000 bayonets at my breast the minister shall not plant another Sicily in the bosom of the Atlantic. I want not the assistance of divine inspiration to foretell, for I am enabled by the visible and unerring demonstration of Nature to assert, that Ireland was destined to be a free and independent nation. Our patent to be a state,

not a shire, comes direct from Heaven. The Almighty has in majestic characters signed the great charter of our independence. The great Creator of the world has given our beloved country the gigantic outlines of a kingdom. The God of nature never intended that Ireland should be a province, and, by G—d, she never shall ! ”

A hurricane of applause rewarded the eloquent speaker, and on a division the Irish barristers gave their votes as follows :

Opposed to the Union	166
In favor of the Union	32
	<hr/>
Majority	134
	<hr/>

—2 O’Flanagan’s Irish Chanc., 256.

DEFINITIONS OF A SEDITIOUS LIBEL.

The difficulty of defining a seditious libel is inherent in the subject-matter, for no limit can be set to the topics, the men, and the measures, that may be spoken of and commented upon. The utmost certainty attainable is to say that whenever a speech or writing imputes personal corruption, or scandalous misconduct, or ignorance in such terms as to incite others to get rid of the obnoxious person by other and speedier methods than the ordinary remedies prescribed by the law, then to that extent and no further it is a seditious libel. This effect of the libel on others in stirring these passions and leading them to violent courses is sometimes deemed the gist of the offence. But any excess in the degree, the adequacy, the justification of the language, must always remain to be settled by means of a jury. He who, as Erskine observed, wishes to avoid sedition, must not excite individuals to withdraw from their subjection to the law, by which the whole nation consents to be governed. He must not strike at the security of property, or hint that anything less than the whole nation can constitute the law, or that the law, be it what it may, is not the inexorable rule of action for every individual. A seditious libel, therefore, in its shortest definition, consists in “any words which tend to incite people

immediately to take other than legal courses to alter what the Government has in charge."—Paterson's Lib. Press and Speech, 83.

LIBELS ON MINISTERS OF STATE.

When ministers of the day are charged with some personal dishonesty or corruption, they have the same remedies as others, apart from a state prosecution. Thus, in 1786, when Pitt, the Prime Minister, was charged by the *Morning Herald* with gambling in the funds, and fraudulently availing himself of official information to make money on the Stock Exchange, and that "his friends were deeply grieved by the discovery, but were trying to palliate his misconduct," he sued the publisher for damages. Erskine, for the defendant, admitted there was no justification, and Lord Mansfield told the jury to remember, this was a very serious question, in which all the public were concerned, namely, whether there shall be any protection to the reputation of honourable men in public or private life. The jury gave a verdict of £250 damages.—Paterson's Lib. Press, 95.

WARRANT TO SEARCH FOR SEDITIOUS PUBLISHERS.

It was finally decided conclusively in Wilkes' case, that there is no authority in the common law for the practice once attempted of a Secretary of State issuing a general search warrant, *i. e.*, a warrant not naming any person as accused, and under it to seize the supposed author of a seditious libel; nor is there any like authority to enter his house and seize his papers for purposes of such search, so as to discover the real criminal. And for like reasons the House of Commons also resolved, in 1776, that a general warrant for apprehending the author, printer, or publisher of a libel, being illegal, except in cases provided for by Act of Parliament, is, if executed on the person of a member of the House, a breach of privilege; and the seizing or taking away the papers of the author, printer, or publisher of a libel, is also illegal, and such seizing or taking away the papers of a member of the House is a breach of privilege.

The liberty of the subject in this respect was thus declared to be unassailable, either by the crown or any minister of state.—2 Paterson's Lib. of Subject, 132.

PROSTRATION IN PARLIAMENT.

As eastern despotism under Henry VIII. was established in England, there was introduced a near approximation to the eastern custom of prostration before the sovereign. We are told that on the last day of the session of 1540, as often as any piece of flattery peculiarly fulsome was addressed to the King by the Speaker or the Chancellor, "every man stood up and bowed themselves to the throne, and the King returned the compliment by a gracious nod from it."—1 Camp. Chanc., 628.

THE SPEAKER AND THE HOUSE OF LORDS.

Lord Lansdowne told Moore as to the custom of the Lords wearing their hats in conferences with the Commons, and the latter taking them off, that the point of etiquette was once contested between them, and public business was a good deal obstructed by their dissensions. But Speaker Onslow had the merit of settling the matter thus: As the Lords sit with their backs to the throne, they are not, he said, supposed to see it; and therefore are not expected to uncover: whereas the Commons, with the throne before their eyes, could not in decency keep their hats on their heads. This reconciled the pride of the latter, and got over the difficulty.

Lord Russell, however, observed upon this account that there was some obscurity, for a conference never takes place in the House of Lords, but in the Painted Chamber, where there is no throne. There may, however, have been formerly a throne there.—Moore's Life.

THE SPEAKER'S CASTING VOTE.

Lord Campbell says, in his Autobiography, "I was one of four benchers of Lincoln's Inn, who dined there with the Speaker (Manners Sutton) in 1828. I asked him if he had prepared a speech to usher in his vote, should

the House be equally divided. He said that he had, and he was so good-humoured as to tell us what he meant to say. It seems that, *qua* Speaker, he would have been at liberty to vote against the question according to his private sentiments. You know that there are some occasions when the Speaker is bound to vote in a particular way, whatever may be his own sentiments; as for an inquiry, against a tax, etc. Sutton says, however, that Abbott, the late Speaker, is thought to have been wrong in supposing that he was bound to vote for the impeachment of Lord Melville."—1 L. Camp. Life, 456.

PARLIAMENTARY DEBATES.

We have, in 1523, the first instance of a complaint of the publication of debates in Parliament. Lord Campbell says: "This, I presume, was merely by verbal narration; but certain smart sayings of the opponents of the grant, and certain gibes levelled at the Chancellor, had been generally circulated; and, reaching his ears, had given him high displeasure. He made formal complaints to the Lords; and insisted, that for any member to repeat out of the House what had passed in the House, was a breach of privilege and a misdemeanour: 'Whereas, at this Parliament, nothing was so soon done, or spoken therein, but that it was immediately blown abroad in every alehouse.' Not contented with this, he resolved to pay a visit of remonstrance to the Commons, and in such style that they should be completely overawed by the splendour of his appearance. He calculated, likewise, on the complaisance of the Speaker, whom he had been instrumental in placing in the chair; but the Speaker was Sir Thomas More, the most courageous as well as the mildest man then in England, who baffled all inquiry. More's conduct on that occasion was said to set the example to Lenthall, when Charles I. sought to arrest the five members."—1 Camp. Lives of Chanc., 473.

THE SPEAKER OF HOUSE OF COMMONS AND HIS POSITION IN THE LORDS.

When sentence was about to be pronounced on Sacheverell, who had been impeached in Parliament, an alterca-

tion arose below the bar of the House of Lords, which, but for the discretion of the Lord Chancellor Cowper, might have led to very serious consequences. When Sir Richard Onslow, the Speaker of the Commons, came up to demand judgment, a question arose whether his mace was to be admitted into the House of Lords, and the Gentleman Usher of the Black Rod insisted that it should be left outside the door, which he said was according to ancient precedent. The Speaker threatened to return to the House of Commons and complain of this indignity, but Lord Chancellor Cowper ordered that the mace should be admitted. "Black Rod," being then ordered to produce his prisoner, was going to put him on the right hand of Mr. Speaker, who was thereupon very wroth and exclaimed: "My lords, if you do not order the Black Rod to go with the prisoner on the left hand of me, at some distance, I will return to the House of Commons!" upon which the Lord Chancellor directed Black Rod so to do, and then Mr. Speaker demanded judgment. The Lords' Journals were silent respecting this controversy, but all the particulars are carefully recorded in the Journals of the Commons, who have ever since enjoyed the privilege of taking their mace, with the Speaker, into the House of Lords, and of having the prisoner placed at some distance on the Speaker's left hand, which were considered great constitutional triumphs.—15 St. Tr., 472.

CHANCELLOR REPRIMANDING THE HOUSE OF COMMONS.

At the close of the session of 1570, the Lord Keeper, Bacon, highly extolled the discretion and orderly proceedings of the Upper House, which rebounded much to their honour, and much to the comfort and consolation of her Majesty; but he inveighed heavily against the popular party in the Commons "for their audacious, arrogant, and presumptuous folly, thus by superfluous speech spending much time in meddling with matters neither pertaining to them nor within the capacity of their understanding." The importance of the Commons was, however, now rapidly rising, and that of the Lords sinking in the same proportion.

OLD MODE OF ADDRESSING THE HOUSE OF LORDS.

On the second reading of the Bill, to declare Queen Elizabeth head of the Church, in the House of Lords, the Lord Chancellor, Heath, rising from the archbishop's bench, delivered a very long oration, of which it may be worth while to give the commencement as a specimen of the style of debating which then prevailed. He thus began: "My lords all, with humble submission of my whole talk unto your honours, I purpose to speak to the body of this Act, touching the supremacy." His argument does not further individualize the persons addressed. This speech shows among other curious particulars, that the expletives, "my lords," and "your lordships," now so copiously introduced almost into every sentence by most speakers in the House of Lords, were then nearly unknown.—2 Camp. Chanc., 82.

ORIGIN OF HOUSE OF COMMONS.

For some reason not explained, Nicholas de Ely, in the reign of Henry III., was removed by De Montfort from the office of Chancellor. He was probably suspected of having temporised between the two parties, and of having countenanced the reference to the King of France. He is to be had in remembrance as the first Chancellor who ever sealed writs for the election of knights, citizens, and burgesses, to Parliament. Whether he, as a native of England, suggested the measure, foreseeing the benefits it might confer upon his country, or De Montfort, who had been born and educated abroad, introduced it from some country in which the third estate was admitted to grant supplies and have a share in legislation, or whether the two thought of nothing but a present expedient for enlarging and confirming their power, by taking advantage of the popularity they then enjoyed with the classes on whom the elective franchise was bestowed, without looking to precedent or regarding distant consequences, it would now be vain to conjecture. Although there was much of accident with respect to the time when the institution first appeared among us, yet it could not have continued to flourish if it had not been suited to the

state of society and the wants of the nation. In spite of violence and oppression, in spite of continued foreign or domestic war, commerce made advances, wealth increased among the middle orders, the feudal system began gradually to decline, and both the King and the people favoured a new power which was more submissive than the barons to the regular authority of the Crown, and at the same time, afforded protection against their insolence to the inferior classes of the community.—*1 Camp. Chanc., 153.*

ORIGIN OF THE QUEEN'S SPEECH TO PARLIAMENT.

King James I., on opening the session of 1604, introduced the present fashion of the Sovereign personally declaring the causes of the summoning of Parliament, but he still adhered to the ancient custom of doing so before the choice of a Speaker. James's speech was exceedingly long and learned, and he would have been highly incensed if any one had treated it as the speech of the minister. When he had concluded, the Lord Chancellor Ellesmere thus spoke:—

“ My Lords and Gentn., all yow have heard his Majesties speech, and that extraordinary confidence his Majestie hath reposed in the greates wisdomes and lovinge affections of this present parliament. Yee doe not expecte, I am sure of it, any iteration or repetition of the same. A Lacedemonian beinge once invited to heare one that could well counterfeit the voyce of a nightingale, put it off with this compliment—I have heard the nightingale herselfe; and whye should yow be troubled with the croakinge of a Chancellor that have heard the powerfull expressions of a most eloquent Kinge? and in very deed for me to gloss upon his Majesties speech were nothing els then as it is in the satyre, *Aureum annulum ferreis stellis reddere*—to inamell a ringe of gould with studdes and starres of rustic iron. I doe not doubte but that his Majesties grave sentences, like Aeschinesses oration, have lefte behinde them a pricke or stinge in the mindes and heartes of all you his hearers, soe as it is not fitt that I, with my rude jainbleinge, should goe aboute to trouble or discompose the same; for as it is

written of Nerva, that when he had adopted the Emperor Trajan, he was suddenly taken away, *Ne post divinum illud et immortale factum mortale quicquam faceret*—least after so transcendant & divine an acte he should doe any thing that might relish of mortalytie—soe it is not fitt that the judicious eares of these noble hearers be further troubled at this tyme. *Ne post divinum illud et immortale dictum mortale audierent.*” — 2 Camp. Chanc., 220.

On the 30th of January, a day inauspicious to the Stuarts, the two Houses assembled. James I. having made a long speech from the throne in his rambling, familiar, shrewd style, the Lord Chancellor Bacon thus addressed him: “May it please your Majesty, I am struck with admiration in respect to your profound discourses, with reverence of your royal precepts, and contentment in a number of gracious passages which have fallen from your Majesty. For myself, I hold it as great commendation in a Chancellor to be silent when such a King is by, who can so well deliver the oracles of his mind. Only, sir, give me leave to give my advice to the Upper and Lower House briefly in two words, *Nosce teipsum*. I would have the Parliament know itself: 1st, in a modest carriage to so gracious a sovereign; 2ndly, in valuing themselves thus far as to know now it is in them, by their careful dealing, to procure an infinite good to themselves in substance and reputation at home or abroad.” — 1 Parl. Hist., 1168.

The Lord Commissioner of the Great Seal, when Lord Protector Cromwell addressed a new Parliament, delivered a long address to the two Houses, by way of enlargement on that of his Highness. As everything was now to be conducted after the antique, it was noticed that the Lord Commissioner did not take a text of Scripture for a thesis, like his venerable predecessors.

When writs of summons for a new Parliament were issued by the Lords Commissioners, under the Great Seal, and the session was opened by Richard Cromwell, according to royal forms, it was noticed that he addressed

both Houses himself in a very sensible speech, and did not call upon any keeper of the Great Seal farther to explain the reasons for assembling them.

When Lord King took his place as Chancellor in the House of Lords, on the 20th of January, 1726, and then read the royal speech, the King did not even repeat the effort he made when he first came to the throne, so as to say in English, that "I have ordered my Lord Chancellor to declare the causes of calling this Parliament." The custom was then introduced of the two Houses echoing the words of the speech, and on that occasion the address was carried unanimously.

DELIVERY OF THE KING'S SPEECH.

From a *mot* of George III., recorded by Lord Eldon, that King might have displayed a talent for delicate sarcasm. Lord Eldon says, "On one occasion George III., when he came out of the House of Lords, after opening the session of Parliament, said to me, 'Lord Chancellor, did I deliver the speech well?' 'Very well, indeed, sir,' was my answer. 'I am glad of that,' replied the King, 'for there was nothing in it.'"

Lord Campbell remembered being told, when he was a boy, although he never saw the anecdote in print, that having knighted a gentleman of the name of Day, at a levee held on the 29th of September, he said, "Now I know that I am a King, for I have turned Day into knight, and made Lady-day at Michaelmas."

ORIGIN OF DOCTRINE OF PARLIAMENTARY PRIVILEGE.

Lord Chancellor Fortescue laid the foundation of parliamentary privilege, to which our liberties are mainly to be ascribed. He had the sagacity to see that if questions concerning the privileges of Parliament were to be determined by the common law judges, appointed and removable by the Crown, these privileges must soon be extinguished, and pure despotism must be established. He perceived that the Houses of Parliament alone were competent to decide upon their own privileges, and that this power must be conceded to them, even in analogy

to the practice of the Court of Chancery and other inferior tribunals. Accordingly, in Thorpe's case he expressed an opinion which, from the end of the reign of King Henry VI. till the commencement of the reign of Queen Victoria, was received with profound deference and veneration.—1 Camp. Chanc., 376.

STRANGER LEAVING AN UMBRELLA IN THE HOUSE OF LORDS.

Shortly before Lord Eldon's resignation arose the famous umbrella case, so frequently quoted in the discussions on the subject of parliamentary privilege. A stranger, being admitted below the bar, was required by one of the doorkeepers to deposit his umbrella in an anteroom, and his property not being returned to him when the debate was over, he brought an action against the messenger for the value of it, before the Westminster Court of Conscience, and recovered a verdict for 17s. 6d. damages, with 2s. 10d. costs. But on complaint made of this proceeding, Lord Eldon had the plaintiff and his attorney summoned to the bar, and he refrained from committing them to Newgate only when they had made a humble apology and renounced the fruits of the verdict; intimating a clear opinion that the House would not allow to be prosecuted any suit brought before any other tribunal with the intent of questioning their privileges.

BREACH OF PRIVILEGE—REJECTING THE VOTE OF AN ELECTOR.

Somers, when Lord Chancellor, was allowed to have done good service to the state in a matter of parliamentary privilege. He established the doctrine, which has been acted upon ever since, that an action lies against a returning officer for maliciously rejecting the vote of an elector: and he so forcibly exposed the abuse of privilege by the Commons that he brought great unpopularity upon them for their proceedings, and they were long more moderate and reasonable in their pretensions. His attempt to control the commitments of the Commons by writs of error, or by writs of *habeas corpus*, returnable in the

House of Lords, has never been revived. There seems no longer any danger of a collision between the two Houses; but to reconcile their pretensions to stop actions brought contrary to their privileges, and the power of the courts of law nevertheless to proceed with such actions, is a formidable constitutional problem which still remains to be solved.

Some suppose that nothing could be more easy than by a statute to define all the privileges of Parliament; but (not attaching much weight to the objection that they ought to be undefined) the most serious inconvenience would arise from saying that the two Houses have no privileges except such as the framers of the statute have specified; and from, as a necessary consequence, submitting the construction of this statute to the courts of common law. Lord Somers saw the evil arising from the vagueness of privilege, but did not venture on a legislative remedy. Swift, in the year 1724, in a letter to Lord Chancellor Middleton, thus wrote: "Lord Somers, the greatest man I ever knew of your robe, lamented to me that the prerogatives of the Crown, or the privileges of Parliament, should ever be liable to dispute in any single branch of either, by which means, he said, the public often suffered great inconveniences, whereof he gave me general instances. I produce the authority of so eminent a person to justify my desires that some high points might be cleared." The legislature may usefully interfere on particular points, as to confer a power of at once stopping an action brought to attack the privileges of either House; but a "Privilege Code" was pronounced by Lord Campbell (who, when Attorney-General, had to fight the battle of privilege) to be impossible.

MEMBER OF PARLIAMENT AS WITNESS ON IMPEACHMENT TRIAL.

When Mr. Tierney was one of the managers for the Commons on the impeachment of Lord Melville, he claimed as a privilege to be examined from his place in the gallery set apart for the Commons' use. Lord Chancellor Erskine said, "I think there ought to be no

distinction between one witness and another as to the place in which he is to be examined. It is the privilege of the Lords to say where a witness is to be placed upon his examination." Mr. Tierney, counting, perhaps, on former intimacy and partisanship with the Chancellor, was beginning to remonstrate, when the Chancellor stopped him by saying very gravely, "I apprehend we can hear no further argument on this subject from a member of the House of Commons; and if the gentleman is to be examined, he must stand in the proper place for witnesses." Mr. Tierney was obliged to descend to the witness box, and being asked by Mr. Whitbread whether he had been at any time Treasurer of the Navy, thus vented his spleen: "My lords, before I answer that question, I presume I may be permitted to clear myself from what may otherwise appear to be want of respect to your lordships. There was nothing more remote from my intention than to show anything inconsistent with the most complete deference to the order and proceeding of this court; neither have I any personal motive for presuming to protest as to the place in which I am examined. I felt that the courtesy of every court in the kingdom would have allowed me to be examined in any place in which I might be sitting when called as a witness; and being in the gallery, as one of the Commons, not an indifferent spectator, but as a member of a Committee of the whole House, to make good the charge against Lord Melville, I did feel that I should be wanting in the respect which is due to them, did I not endeavour to maintain my right and privilege of being examined in my place, in which, as one of the representatives of the people, I attended. Having protested against the place in which I now stand, I will proceed to answer the questions of the honourable manager."—6 Camp. Chanc., 579.

THE SPEAKER APPROVED BY A PHANTOM KING.

One of the most ludicrous difficulties in which the House of Commons was involved, in 1789, arose from the sudden death of Speaker Cornwall, and the election of Mr. W. Grenville to succeed him. Regularly, the new

Speaker should have been approved by the King, and should have prayed for a continuance of the rights and privileges of the Commons. Burke said, "They had just set up a 'phantom' to represent the Great Seal, and now their Speaker was to bow before it, and to claim their rights and privileges from a creature of their own creation." However, they altogether waived the ceremony.

Lord Thurlow. and Lord Eldon after him, professed to act on the King's instructions, when they knew he was insane; and they practically did what they pleased in the King's name.

LAWYERS EXCLUDED FROM PARLIAMENT.

In ancient times lawyers were frequently, and by repeated Acts of Parliament and Ordinances, disqualified from sitting as members of the House of Commons. In the writ of summons, a prohibition against their election was often inserted. Lawyers, indeed, were, according to Carte, the first class positively excluded from the House, and it is supposed that the words "*gladiis cinctos*" (girded with swords), which appear in the writs of summons in the time of Edward III., were introduced to exclude them. At that time lawyers abounded in the House. "Four shillings a day," writes Carte, "the constant wages of a knight of the shire, though more than ten times that number in our days, was not a sufficient equivalent for the trouble and inconvenience which a gentleman of the first distinction in his county must undergo by removing to London, nor indeed was it worth his attention; but it was very considerable advantage to a lawyer, whose business called him thither in term time; the terms being in those days the usual times of Parliament sitting." However, to exclude the lawyers still more effectually, it was declared that if elected they should not receive the wages paid to the members in those days. We read in a writ of summons, dated Lichfield, in the fifth year of Henry IV., "The King willed that neither you, nor any other sheriff (*vicecomes*) of the kingdom, or any apprentice, nor other man following the law should be chosen."

“This prohibition,” says Coke (4th Inst., 48), “was inserted in virtue of an Ordinance of the Lords, made in the forty-sixth year of Edward III., and by reason of its insertion, this Parliament was fruitless, and never a good law made thereat, and therefore called *Indoctum parliamentum*, or lack-learning Parliament.” “Since this time,” he adds, “lawyers (for the great and good service of the commonwealth) have been eligible.” Prynne, that “voluminous zealot,” however, argues for the propriety of their exclusion, which he declares shortened the duration of the session, facilitated the despatch of business, and had the desirable effect of “restoring laws to their primitive Saxon simplicity, and making them most like God’s commandments.”—2 Law and Lawyers, 32.

LIBERTY OF PRESS.

The liberty of the press means the liberty of publishing whatever any member of the public thinks fit, on any subject, without any preliminary license or qualification whatever, and subject only to this restriction, that if he goes to an extreme in making blasphemous, immoral, seditious, or defamatory statements, then he may be punished afterwards by indictment, information, or by action, for such excess. Hence it is obvious, that until one knows what are the excesses which the law deems blasphemy, immorality, sedition, or libel, he cannot fully comprehend the extent of liberty he may enjoy. These are but the mere negative restrictions, indicating like finger-posts the forbidden corners beyond which he cannot travel with impunity. But a very little reflection will at the same time teach him, that every thing that is interesting to man, every kind of speculation on matters of religion, politics, science, philosophy, or practical life can be discussed with perfect freedom, without the writer being either blasphemous, immoral, seditious, or libellous. To steer clear of these rocks and quicksands requires the same experience and knowledge which pilots and all other skilled workmen require in their daily avocations. Yet the vast range of ocean open to the navigator is so

great in proportion to the spaces shut out, that the positive enjoyment represented by the liberty of the press, is not only the most intense and sensitive of which a citizen is capable, giving scope to his noblest faculties, and bringing within range his most far-reaching powers, but the restrictions fall into insignificance, and are altogether inappreciable. These restrictions, as will be seen, are necessary for the protection of all other fellow-citizens who claim equal rights, and have their own affairs to further and protect, and who would otherwise be molested in their own separate pursuits.

The liberty of the press as thus understood has been described as the palladium of the constitution, and as that which will command an audience when every honest man in the kingdom is excluded; as Lord Camden said, it is the greatest engine of public safety; and to which, as Fox said, the modern improvement in the science of government was entirely owing, and indeed to which it is owing in a great measure that we enjoy any liberty at all. The freedom with which skillful writers can animadvert on the conduct of all public men and public measures, acts as a check on every kind of misgovernment, and baffles most of such attempts sooner or later. It gives dignity and a sense of security to the whole people when they know that some champion will be forthcoming, or is ever on the alert, able to meet all comers, whenever an abuse is discovered, a grievance felt, or an evil is to be redressed, and that there is no machinery by which any interested party can be sure of enforcing absolute silence. Though Parliament at first misunderstood the power of the press, and like other powers, feared some new rival, yet when these great engines are allied, it is seen they are the complement of each other, and that neither could put forth half its strength without the other being ready to second it. The power of each is at least immeasurably enhanced by calling in aid its natural ally.—Paterson's Lib. Press, 41.

CENSORSHIP OF PRESS.

The decree of the Star Chamber, in 1637, ordered all books to be licensed by the Archbishop of Canterbury

or the Bishop of London, or their substitutes. The Long Parliament, imbued with the same notions and fears, passed several Acts for the regulation of printing, whereby they enforced a previous license of books and the printing of the printer's name, as well as a license for printing presses, and also gave power to seize those that were unlicensed, and also power to enter houses and apprehend the authors or sellers. In 1662 the Licensing Act prohibited the printing of a book until it was first licensed and registered at Stationers' Hall; also until the consent of the author was obtained. That Act was continued several times, and during William and Mary, till it came to an end in 1692.

The censor of the press in 1692 had, in his zeal for divine right, refused his sanction to a History of the Bloody Assizes. Blount attacked the principle of a censorship. One Blount had, while censor, licensed unawares a book which the House of Commons resolved ought to be burnt by the common hangman, and he was ordered to be dismissed and committed to prison. This event opened the eyes of men to the worthlessness of the function of a censor, and the booksellers and printers joined in the complaints. The Act was not renewed after 1692. Newspapers were commenced almost immediately thereafter, and increased rapidly

ERSKINE ON FREEDOM OF PRESS.

“From minds subdued by the terrors of punishment there could issue no works of genius to expand the empire of human reason, nor any masterly compositions on the general nature of government, by the help of which the great commonwealths of mankind have founded their establishments; much less any of those useful applications of them to critical conjunctures, by which, from time to time, our own constitution, by the exertions of patriotic citizens, has been brought back to its standard. Under such terrors all the great lights of science and civilization must be extinguished, for men cannot communicate their free thoughts to one another with a lash held over their heads. It is the nature of everything that is great and useful, both in

the animate and inanimate world, to be wild and irregular; and we must be contented to take them with the alloys which belong to them, or live without them. Genius breaks from the fetters of criticism, but its wanderings are sanctioned by its majesty and wisdom, when it advances in its path; subject it to the critic and you tame it into dullness. Mighty rivers break down their banks in the winter, sweeping to death the flocks which are fattened on the soil that they fertilise in the summer. Tempests occasionally shake our dwellings, and dissipate our commerce; but they scourge before them the lazy elements which without them would stagnate into pestilence. In like manner, Liberty herself, the last and best gift of God to his creatures, must be taken just as she is. You might pare her down into bashful regularity, and shape her into a perfect model of severe scrupulous law; but she would then be Liberty no longer; and you must be content to die under the lash of this inexorable justice, which you had exchanged for the banners of freedom."—Ersk. Speeches.

ADVANTAGE OF DAILY REPORTS OF TRIALS.

At Gloucester assizes, in 1853, a cause was tried in which a gentleman laid claim to large estates, and in support of his claim produced deeds and documents, and seals, of which he gave a plausible account. During the cross-examination by Sir F. Thesiger, a telegram reached the counsel from an engraver in London, who had read an account of the trial in the newspapers, and was enabled to say that a certain brooch and seal produced by the plaintiff, and palmed off as part of the family arms, which he had got fifty years before, had been made to order very shortly before the trial. Sir F. Thesiger put the questions founded on this intelligence, and at once blew up the whole fabric of forgery and falsehood. The plaintiff was charged at once with forgery, and was, after trial, convicted and transported.

FREEDOM TO PUBLISH NEWSPAPERS.

All the restrictions on the publishing of newspapers caused by stamp duties, advertisement duties, and

affidavits, and recognizances, being swept away, the occupation of a newspaper proprietor, with his mode of investing capital, is as free as other occupations, and there are few peculiarities left except by way of facilitating the discovery of proprietorship when that is needful. There is no court or functionary which has any power whatever to suppress, with or without reason, any newspaper, the publishers of which are liable for libels to the same extent as the publishers of other books; but not to a greater extent; and the punishment does not directly affect the continuance of the periodical. Newspapers may entail punishment on their proprietors and publishers on each occasion of offence, but cannot on any pretext be suppressed.—Paterson's Lib. Press, 58.

THE ENGLISH FREEDOM OF SPEECH.

The citizens of a free country differ from those of a country less free most of all in this one characteristic, that the former are constantly animated with the consciousness that each and every part of the government—both what is imperial and what is local—exists for the good, not of the governors, but of the governed, and that the governed take an active and personal part in its whole machinery, by virtue of their representatives in Parliament, who preside over the springs of action, and who both act and react on each other. The public business is the business of every intelligent citizen, in which he takes almost as close an interest as in his own personal affairs. The power, glory, and influence of his country, are felt to be his own; he watches the movements of fleets and armies, the feints and protests of ambassadors, the rise and fall of ministers, as if they all drew their inspiration from his own thoughts, and as if they were doing his own business and contributing only their fair share to the common fund, in the disposal of which he has an equal voice. There is no longer recognized any divine right of government confined to any one class. Hence, all the great officers of state, who take their turn of care and of temporary authority, are viewed as within his call, and as deserving well or ill, according as they divine his own mind, or ought to have divined it. Comment, criticism,

censure, and praise, on all public men and public affairs, are thus part of his every-day thoughts, which give variety and freshness to life, and lift him above the narrow round of his own immediate occupations. He thus becomes part of the management in the greatest enterprises, and takes much of his daily pleasure in dispensing praise to his faithful stewards, and blame to those who mistook his secret instructions.

In a free country, or one aspiring to the highest freedom, it is thus indispensable that the general rule should be that each citizen shall have all but the widest scope and encouragement to make his country's business his own, and to circulate his opinion on every detail of its multifarious affairs, and on every several officer in charge of them. Yet in the exercise of this imperial faculty he must needs often touch on delicate ground. His free handling of reputations may often lead to excess of indignation, scorn, contempt, reckless personal abuse, and relentless malignant hatred. All this paper shot is but the homage paid by the ministers of a free country for the certainty of retaining in the citizens' own hands their control over their own affairs. And as the vocation of ministers and patriots deserves the same protection, as free speech requires full play, collisions must occur, and certain limits must often be touched upon and overpassed. Thus the fiercest light of freedom surrounds all that part of the liberty of speech, thought, and reputation, which is shut in by the fear of seditious libels. Voices from the crowd accompany every conspicuous step in the government. In the war of words few can hope to escape without committing some excess. It is thus of the highest importance to try and trace out the bounds where freedom ends and where the firm hand of irresistible authority commands absolute silence.—Paterson's Lib. Press, 75.

RIGHT OF CRITICS OF BOOKS TO RIDICULE THE AUTHORS.

Lord Ellenborough, C.J., said every person who publishes a book commits himself to the judgment of the public; and any one may comment on his performance. If the commentator does not step aside from the work, or

introduce fiction for the purpose of condemnation, he exercises a fair and legitimate right. In one case an author of a book on travels was caricatured in a drawing as standing in a ridiculous attitude, bending under the weight of two copies, and with all his wardrobe tied up in a pocket-handkerchief. And Lord Ellenborough ruled that this was not unfair ridicule of the bad taste and inanity of the author; and if, as the author alleged, his book had become unsalable, and he had lost a publisher for another forthcoming work of the same kind, this was deemed merely *damnum absque injuriâ*—as an unavoidable incident for which no legal remedy exists. No limit can therefore be set to the contempt and ridicule that may be awarded; it is only when the critic deviates from his own strict function, and seeks, without any reasonable cause, to impute fraud, or immorality, or corruption, or some base motive bordering on crime, that he becomes amenable to an action of libel.—Paterson's Lib. Press, 139.

THE RIGHT OF PUBLIC MEETING.

The very first instance of a modern public meeting was said to be one held by the electors of Westminster, in Westminster Hall, on August 29, 1769, to adopt a petition for redress of grievances. The practice of holding such meetings for discussing public grievances seems to have been largely developed by the excitement consequent on the expulsion of Wilkes from the House of Commons, in 1770. A law officer, near the close of last century, told the House of Commons that England was the only country in the world where meetings to discuss grievances were allowed without the attendance of a magistrate, and that Ancient Rome, in the zenith of its liberty, never allowed the people to meet except in a regular body under official control. And the Government of that day came to the conclusion that the right of public meeting had been abused, and that no meeting should thereafter be allowed, except it should be called by the lord lieutenant, sheriff, or other official, and that a magistrate should be able to put an end to it at once, if he thought it riotous. It was pointed out in answer to such a proposal, on the other

hand, that public meetings ought not to be restricted; that they, and they alone, had contributed to put an end to the American War. Moreover, that it was mocking the understanding and feelings of mankind to tell them they were free out of the Houses of Parliament, so long as they could not meet for the purpose of expressing their sense of the public administration of the country, or of the calamities occasioned by a particular war then waged, and so long as any grievance or sentiment could not be declared without a magistrate considering it seditious and subjecting them to penalties. The proposal of the Government was carried out to a large extent about twenty years later. The Six Acts of 1819 were passed, only a few parts of which still are in force, and one of them required that no meeting of more than fifty persons should be held without a previous six days' notice to a justice of the peace, and forbidding all but inhabitants of the county or parish to attend. This last enactment was, however, limited to five years, and has not since been renewed.—Paterson's Lib. Press, 21.

DISTURBANCES AT PUBLIC MEETINGS.

If any person insist on speaking, or on speaking too long, at a public meeting, it is always in the power of the chairman, as the agent of the promoters, who are the legal occupiers of the room for the time being, to request such person to desist, or to leave the room; and if after request such person refuse to leave, then he may be ejected with just enough of force, and no more, to overcome his resistance. And if in course of this process an assault be committed, the mutual rights of parties to push or resist must be adjusted on the footing that the chairman, as the agent of the promoters, was entitled at any moment, and without stating any reasons, to request any person present to leave the room, and if that person refuse to leave, he becomes thereafter a trespasser. It is true that even a trespasser cannot be assaulted: he must first be requested to withdraw, and such force as may be necessary to put him out must then be used, not by way of punishment, but simply and solely to carry out with the least possible violence the design to get

rid of him. And for a like reason, inasmuch as the promoter, by means of the chairman, is entitled to the exclusive occupation of the room. even though he acted with gross unfairness, or in breach of the common understanding of the invitation, he is nevertheless equally entitled to enforce his will, for as the whole business was based on a mere invitation and hospitality, and not on any contract, there can be no breach and no cause of action. The only remedy of those who are dissatisfied is to hold a meeting of their own, at another time and place, and under a management more to their liking.—*Paterson's Lib. Press*, 27.

RIGHT OF PUBLIC TO MEET IN PUBLIC PARKS.

The primary object of the royal parks, so far as set apart for any definite object, being the recreation of all who choose to resort to them, inasmuch as the holding of public meetings could not be deemed incidental to recreation, and as the freehold of these parks, as well as the control of their possession and use, is vested in the Crown, no public meeting could be held there unless with the permission of the Crown. At the same time, inasmuch as the Crown has for a length of time suffered, and thereby impliedly invited all comers to enter, such as have entered could not be turned out except by first requesting each individual to leave. In this way alone could the license to enter and remain in a park be revoked, and the licensee be turned into the position of a trespasser, and so lawfully ejected. Thus the difficulty of preventing masses of the public from availing themselves of these parks as convenient places for holding public meetings, and thereby abusing the hospitality afforded to them, became conspicuous. They had no legal right to enter, and yet it was all but impracticable without a riot to prevent them. A statute was at last passed in 1872 which recognised the necessity of the public having some portion of a park set aside for such meetings, and for hearing addresses, and thus it succeeded in supplying the want that had been felt.

In 1866 the law officers advised the government that the people could not be turned out of the public park,

except after notice given to each, and then only sufficient force and no more must be used to expel them. In 1856, also, the Crown was advised that the parks were in the same position as a private property is, and that the Crown had the same and no greater rights of excluding trespassers. The Parks Regulation Act applies to most of the public parks in and adjacent to London. By that Act no person shall deliver or invite others to deliver a public address except in accordance with the rules of the park; and the rules of Hyde Park define convenient places for public meetings. And any person violating the rules, and whose name or residence cannot be ascertained by the park keeper, may be summarily arrested and charged with the offence.—Paterson's Lib. Press, 23.

THE RIGHT OF PETITIONING.

The right of petitioning the Crown and Parliament, who preside over the springs of action, and so making both fully acquainted with the desired redress, is an essential part of liberty. It implies mutual confidence and alacrity in the desire to perfect the law, which is the great working machine of government, and the efficiency of which ought to bespeak perpetual interest and vigilance on the part of all alike. It would be singular if in England it had not been early discovered that this right of petitioning was so valuable that no obstruction to it could be tolerated. At every stage of progress it must have been a leading desire that the governed, unless they were accustomed to abject slavery and blind obedience, should ardently seek for every opportunity of reaching the ear of their governors; and though the same want must be felt under every government in the world, how much more so must it be felt under one which has been the fruit of original contract, or which at least, in the best epochs of its history, bears the mark of mutual and intelligent assent on the part of governors and governed alike—which is based on the accepted axiom, that it is the duty of the one to hear, quite as much as it is the duty of the other to obey.—Paterson's Lib. Press, 31.

PRACTICE OF BURNING LIBELS.

One mode of disposing of written or printed libels has apparently been adopted by most nations with singular unanimity, and that is the burning of the obnoxious paper, which has been assumed, rather hastily, to be a final extinguishment of all the mischief therein contained. In Queen Anne's reign, the decree of the University of Oxford, in 1683, respecting passive obedience, was ordered by the House of Commons, in 1710, to be burnt by the hands of the common hangman, as contrary to the liberty of the subject and the law of the land. In 1751 a seditious libel entitled "Constitutional Queries recommended to every true Briton," was ordered by the House of Commons to be burned by the hands of the common hangman in Palace Yard at 1 P.M., and the Sheriff of Middlesex was to attend and cause the same to be burnt accordingly. When Wilkes' libel in the *North Briton*, No. 45, was brought to the knowledge of the House of Commons, in 1763, the House resolved, that it was false, scandalous, and seditious, and tending to excite to traitorous insurrections, and ordered that it should be burnt by the hands of the common hangman in Cheapside. But when the Sheriff proceeded to see the order executed, the mob were violent, and pelted the officials with stones and missiles, the general cry being "Wilkes and liberty!" and they burned a petticoat and jack-boots in its stead, and the blame of this led to a parliamentary inquiry of four days. Since that date neither the legislature nor the courts of law have thought fit to return to this primitive experiment.—Paterson's Lib. Press, 229.

MEN, NOT MEASURES.

Æschines used to tell a story of the Lacedemonians, that at a meeting when a question was debated, a man who led a very disreputable life, rose and suggested what ought to be done, and he so convinced them all, that his proposal was unanswerable, and it was about to be carried. An old and venerable sage then rose with indignation, and said that there would be no hope for the city if it employed such a man as that to guide its councils. If it

was a wise thing to do, let us have it proposed by a respectable man. He then named a person of great credit, though no orator, to propose the matter, which was done, and accepted, and acted upon, and so all trace of the disreputable origin obliterated.—Aul. Gell., B. 18, c. 3.

THE HABEAS CORPUS ACT.

The Habeas Corpus Act is only a natural sequel and development of Magna Charta. No dictator, whether single-handed or hydra-headed, can long breathe the same air with those who have caught the secret of its power. It appeals to the first principles of security, and to the law of nature, if any such there be. Its whole essence is nothing else than this. Every human being, who is not charged with or convicted of a known crime, is entitled to personal liberty. If debt requires imprisonment, and a court has found it due, be it so. But if one is imprisoned neither for a known crime nor a debt, then the gaoler, whoever he be, must instantly state the reason why, or take the consequences. And if one is imprisoned for treason or felony, he can insist on being tried in the second term or assizes after commitment, or on being released.

The writ of *habeas corpus* is an integral part of the British constitution, and as was once said, the clearing of such a matter has redeemed the body of liberty. It has cleared the air for all time to come. No subject, no government can resist its efficacy. The process of the court can penetrate the deepest dungeon, and the most sequestered cloister, and the innermost chamber of the most powerful subject. It would be idle for any one to dream of baffling it, and with the help of that universal light created by a free press and an ever ready sympathy against all kinds of oppression between subject and subject, between subject and government, each citizen feels as secure as any settled order of society yet known to mankind has ever witnessed. The efficacy of the process can only be suspended by an Act of Parliament; and so great is the reluctance to ask, or the desire to concede this extreme measure, and create a dictator, that only one or two instances, and those of short duration,

and caused by extreme pressure, have occurred of the suspension of the Habeas Corpus Act since the Act of 1679 was passed; and the longer it exists, such occasions seem less and less likely to recur.—2 Paterson's Lib. Subject, 208, 218.

THE PASSING OF THE HABEAS CORPUS ACT IN 1679.

Lord Chancellor Shaftesbury had several times attempted in vain to remedy abuses of imprisonment; and he at last, with admirable skill, framed a statute, by which personal liberty has been more effectually guarded in England than it has ever been in any other country in the world. This he caused to be introduced in the Commons, where it was generally supported. But a strong opposition was got up to it in the Lords. Although avowedly the measure of the Lord President, all the weight of the court was exerted against it, and several amendments were introduced in the committee, with a view of defeating it. under the belief that the Commons would not agree to them. The third reading is said to have been carried by an accident. According to Bishop Burnet, "Lords Grey and Norris were named to be tellers. Lord Norris, being a man subject to vapours, was not at all times attentive to what he was doing. So a very fat lord coming in, Lord Grey counted him for ten, as a jest at first, but seeing Lord Norris had not observed it. he went on with his misreckoning of ten; so it was reported in the House, and declared that they who were for the Bill were the majority, though it indeed went on the other side. There must certainly have been some mistake, accidental or wilful, for the members were declared to be 57 to 55; and by the minute-book of the Lords it appears there were only 107 peers in the House. We must suppose before the Lord Chancellor was aware of the mistake, he had put the additional motion, 'that this Bill do pass;' and that it had been agreed to as a matter of course after the division."—3 Camp. Chanc., 342.

STATUTES WRITTEN IN ENGLISH LANGUAGE.

It is remarkable that the statute of 1 Richard III., c. 1, is the first statute in the English language, the statutes

hitherto having been all in Latin or French, and it was taken as a precedent, for all statutes afterwards are in English. It is curious that in this reign, which we regard with so much horror, not only were laws given to the people of England for the first time since the Conquest, in their own language, but Acts of Parliament were for the first time printed.—I Macpherson's Annals of Commerce, 704.

WHAT IS EVADING AN ACT OF PARLIAMENT.

Lord Chancellor Cranworth exposed much nonsense often talked about frauds on the legislature. He said, "I never understood what is meant by an evasion of an Act of Parliament. Either you are within the Act of Parliament or you are not within the Act of Parliament. If you are not within it, you have a right to avoid it—to keep out of the prohibition. If you are within it, say so, and then the course is clear. And I do not think you can be said not to be within it because the very words have not been violated."

Hence, Lord Beauchamp's legacy to his trustees to expend £60,000 on almshouses, if any one would present a site, was held to be no evasion of the Mortmain Act, which only forbids gifts of land, or of money to be laid out in purchasing land. Lord Beauchamp did neither by a legacy so expressed.

THE SHORTEST STATUTE.

Lord Coke says, the shortest Act of Parliament he ever met with was one passed in the 5 Hen. IV. "None from henceforth shall use to multiply gold or silver, or use the craft of multiplications; and if any do the same, he shall incur the pain of felony."

CONFUSING STATUTES.

Judge Clayton was sent from England to Ireland to be a judge, and was a matter of fact man, though a good lawyer. One day, dining with some sprightly Irish counsellors, he said to counsellor Harwood, in a grave and confidential way, "In my country the laws are numerous,

but then one is always a key to the other. In Ireland it is just the contrary: your laws so perpetually clash with one another, and are so very contradictory, that I protest *I don't understand them.*" "True, my lord," said Harwood, "that is *what we all say!*" There was too much laughter after this among the wits.

STRUGGLING AGAINST HARSH STATUTES.

In the time of Lord Mansfield a penalty was incurred by a Roman Catholic priest if he celebrated mass. Lord Mansfield, on the trial of an action for this penalty, charged the jury thus: "As to the defendant being a priest, you are not to infer that, because he preached; for a deacon may preach and perform all the ceremonies here performed. There is no evidence that the defendant is a priest. Why do they not call some one who was present at his ordination? You must not infer that he is a priest because he said mass, and that he said mass because he is a priest." The jury found a verdict of "not guilty," which many Protestants were much displeased at.

Lord Campbell thought Lord Mansfield's charge to the jury, in the last case, could hardly be justified, and adds: "It reminds me of the judge who, much disliking the Game Laws, and trying an action against a man for using a gun to kill game without being qualified, when it had been proved that the defendant, being in a stubble field with a pointer, fired his gun at a covey of partridges, and shot two of them, objected that there was no evidence that the gun was loaded with shot; and advised the jury to conclude that the birds fell down dead with fright!"—2 Camp. C.J.s, 515.

ACT OF PARLIAMENT PASSED IN THREE DAYS.

One night in 1779, at twenty minutes past twelve o'clock, as the House of Commons was about to adjourn, the Attorney-General, Wedderburn, rose in his place and, without any previous notice, moved "for leave to bring in a Bill to suspend all exemptions from impressment into the navy, together with the right of those impressed to sue out a writ of *habeas corpus* for their liberation."

This in truth was to authorize the government by a conscription to man the navy with any portion of the inhabitants of Great Britain at their discretion. At one o'clock the bill was brought in and read a first and second time. The following day it was sent to the Lords, and on the third day it received the royal assent.

DISCRETION CANNOT BE GIVEN BY ACT OF PARLIAMENT.

Serjeant Sayer went the circuit for some judge who was prevented by indisposition going in his turn. He was afterwards imprudent enough to move, as counsel, for a new trial in a cause heard by himself, on the ground of his misdirecting the jury as a judge. Lord Mansfield said: "Brother Sayer, there is an Act of Parliament which, in such a matter as was before you, gave you discretion to act as you thought right." "No, my lord," said the Serjeant, "that is just it; I have no discretion in the matter." "Very true, you may be quite right as to that," said Lord Mansfield, "for I am afraid even an Act of Parliament could not give *you* discretion!"

ACTS OF PARLIAMENT AND THEIR CRUDITIES.

In the reign of George III. a Bill was introduced into the House of Commons for the improvement of the Metropolitan watch. In this Bill there was originally a clause by which it was enacted that the watchman should be *compelled to sleep* during the day. When this clause was read in committee, a gouty old baronet stood up, and expressed his wish, that it should be made to extend to members of the House of Commons; as *podagra* had, for many nights, to his great discomfort, destroyed his sleep, he should be glad to come under the operation of that enactment. In a certain other statute, the punishment of fourteen years' transportation was imposed for a particular offence, "and that upon conviction one-half thereof should go to the *King*, and one-half to the informer!" It is not difficult to surmise how this mistake arose. The punishment, as originally inserted in the Bill, was a fine, for which transportation

was afterwards substituted, and when the alteration was made, sufficient care was not taken to see what other changes were thereby rendered necessary.—2 Law and Lawyers, 57.

A NICE POINT OF LAW AS TO THE CONSTRUCTION OF A STATUTE.

Adolphus, the criminal lawyer, said he one day, in 1840, went to the Exchequer Chamber and saw, for the first time, fifteen judges sitting together to hear arguments. This was the case of Frost and the other rebels at Monmouth. The point was whether the copy of the indictment and the list of witnesses and jurors having been delivered at a distance of five days from each other, although both within the period given by the statute, could be said to have been delivered according to the terms of it, which require that both documents be *delivered at the same time*. The arguments were very long, and far from entertaining. Another point arose, namely, whether, supposing the objection had been good, it ought not to have been taken before the prisoner pleaded. Of the judges, six decided that it was not a good objection; and nine that it was good, but not taken in time. Six held that it was a good objection, and in time. Adolphus added in his diary that he was of the last opinion. The convicts would not, he supposed, under these circumstances, be executed; and he inclined to a belief that Government, who were apprised of the defect in time to have remedied it, left this opening for the prisoners to creep out of on purpose.—R. v. Frost, 2 Moody Crown Cases, 170.

A SCOTCH JUDGE ON THE EFFECT OF STATUTES.

Lord Hermand, a Scotch judge, was very apt to say, "My laards, I feel my law—*here*, my laards," striking his heart. Hence, he sometimes made little ceremony in disdaining the authority of an Act of Parliament, when he and it happened to differ. He once got rid of one which Lord Meadowbank (the first), whom he did not particularly like, was for enforcing, because the

Legislature had made it law, by saying, in his snorting, contemptuous way, and with an emphasis on every syllable, "But then we're told, that there's a statut' against all this. A statut' ! What's a statut' ? Words ! mere words ! And am I to be tied down by words ? No, my laards ; I go by the law of *right reason*."—Cockburn's Mem., 137.

CHAPTER VIII.

*ABOUT PUNISHMENTS, PRISONERS, AND
JUSTICES OF THE PEACE.*

COUNSEL NECESSARY FOR ALL PRISONERS.

When Mr. Antony Ashley Cooper (afterwards Earl of Shaftesbury) was the representative in Parliament for Poole, he brought in a Bill for granting counsel to prisoners in cases of high treason. This he looked upon as important, and had prepared a speech in their behalf; but when he stood up to deliver it in the House of Commons, he was so intimidated that he lost all memory, and was quite unable to proceed. The House, after giving him a little time to recover from his confusion, called loudly for him to go on, when he proceeded to this effect: "If I, sir," addressing the Speaker, "who rise only to give my opinion on the Bill now depending, am so confounded that I am unable to express the least of what I proposed to say, what must be the condition of that man who, without any assistance, is pleading for his life, and is in apprehension of being deprived of it?"

PROTECTION OF PRISONERS ON TRIAL.

Chief Justice Holt caused a great improvement in the law protecting prisoners, by putting down the current practice of giving in evidence on a criminal trial the previous malpractices of the prisoner. He said, "Hold! hold! what are you doing now? Are you going to arraign his whole life? How can he defend himself from charges of which he has no notice? And how many issues are to be raised to perplex me and the jury? Away, away! that ought not to be; that is nothing to the matter."

The same judge put down the revolting practice of trying prisoners in fetters. On seeing one at the bar, he said, "I should like to know why the prisoner is brought in ironed. If fetters were necessary for his safe custody before, there is no danger of escape or rescue here. Let them be instantly knocked off. When prisoners are tried they should stand at their ease."

A PRISONER INVOKING CURSES ON HIMSELF.

A prisoner was tried before Justice Maule for a serious offence, and after the jury had returned a verdict of guilty, which made a great sensation in court, the prisoner exclaimed, under great excitement, "May God strike me dead, my lord, if I did it." The court and spectators, after so clear a case of guilt, were shocked at this impiety. The judge looked grave, and paused an unusually long time before he said a word. At last, amid breathless silence, he began: "As Providence has not seen fit to interpose in your case, it now becomes my duty to pronounce upon you the sentence of the law," etc., etc.

COUNSEL SWEARING ON ADDRESSING THE JURY.

James Allan Park, a counsel who had the character of being very sanctimonious, having in a trumpery cause affected great solemnity, and said several times in addressing the jury, "I call Heaven to witness," "As God is my Judge," etc.; at last, Lord Ellenborough burst out, "Sir, I cannot allow the law to be thus violated in open court; I must proceed to fine you for profane swearing five shillings an oath." The learned counsel, whose risibility was always excited by the jokes of a Chief Justice, is said to have joined in the laugh created by this pleasantry.

THE SWEARING CHANCELLOR.

Lord Chancellor Thurlow was a man of great ability, but unscrupulous in pushing his own fortunes. He maintained his ascendancy chiefly by a pair of enormous, black eyebrows fixed on a very solemn cast of countenance, by his voice, which was like that of Olympian

Jove, and by his energetic habit of swearing profane oaths at everybody, including the King and the bishops. He made everybody stand aghast, and hence all feared and respected him. Fox used to say of him, that he had the most dishonest face of any man he ever knew, for "no human being could by any possibility be half so wise as Thurlow looked!"

PRISONER RELATED TO JUDGE.

Once going the Northern Circuit as judge, before he had the Great Seal, Sir Nicholas Bacon was about to pass sentence on a thief convicted before him, when the prisoner, after various pleas had been overruled, asked for mercy on account of kindred. "Prithee," said my lord judge, "how comes this about?" "Why, if it please you, my lord, your name is Bacon and mine is Hog, and in all ages Hog and Bacon have been so near kindred that they are not to be separated." "Aye, but," replied the judge, "you and I cannot be kindred except you be hanged, for Hog is not Bacon until it be well hung"—Bac. Apopth.

A JUDGE CHECKMATING PRISONER.

When Lord Kames, an indefatigable and speculative but coarse Scotch judge, tried Matthew Hay (with whom he used to play at chess) for murder at Ayr, in September, 1780, he exclaimed, when the verdict of guilty was returned, "That's checkmate to you, Matthew!" Lord Cockburn says as to this anecdote, that, besides general and uncontradicted notoriety, he had this fact from Lord Hermand, who was one of the counsel at the trial, and never forgot a piece of judicial cruelty which excited his horror and anger.

The incident has been sometimes attributed to Lord Braxfield, a still coarser judge.

A MURDER DESCRIBED BY A JUDGE.

Lord Cockburn, in describing the eccentric Scotch judge, Lord Esgrove, says: "As usual then, with stronger heads than his, everything was connected by his terror

with republican horrors. I heard him, in condemning a tailor to death for murdering a soldier by stabbing him, aggravate the offence thus, 'And not only did you murder him, whereby he was bereaved of his life, but you did thrust, or push, or pierce, or project, or propell, the le-thall weapon through the belly-band of his regimental breeches, which were his Majesty's!'"—Cockburn's Mem., 122.

JUDGE SUMMING UP AGAINST A WELL-DRESSED PRISONER.

When Savage the poet was indicted for murdering a companion in a midnight brawl, the judge was Justice Page, who was considered very insolent and severe. Savage used to tell the story, that this judge during his summing up of the evidence, endeavoured to exasperate the jury against the prisoner by this eloquent harangue: "Gentlemen of the jury, you are to consider that Mr. Savage is a very great man, a much greater man than you or I, gentlemen of the jury; that he wears very fine clothes, much finer clothes than you or I, gentlemen of the jury; that he has abundance of money in his pocket, much more money than you or I, gentlemen of the jury; but, gentlemen of the jury, is it not a very hard case, gentlemen of the jury, that Mr. Savage should therefore kill you or me, gentlemen of the jury?" Savage was found guilty, and left for execution, but afterwards, through a powerful friend, obtained the King's pardon. Savage revenged himself by lampooning the judge as one "of heart impure and impotent of head!" etc., etc.

HANGED THOUGH HE HAD £200.

Mr. Selwin, who had stood for the office of Chamberlain of London but lost the election, told this story. "I was once requested by a man under sentence of death in Newgate to come and see him in his cell, and, in pure humanity, I made him a visit. The man briefly informed me that he had been convicted of felony, and daily expected the warrant of his execution. 'But,' said he, 'I have £200, and you are a man of character, and had the court interest when you stood for Chamberlain. I should

therefore hope it is in your power to get me off.' I was struck with so strange a notion, and to enable himself to account for it, asked if there were any alleviating circumstances in his case. The man peevishly answered, no, but he had inquired into the history of the place where he was, and could not find that any one who had £200 was ever hanged. I told him it was out of my power to help him, and bade him farewell. Yet he found means after all to escape punishment."

THE PUNISHMENT OF SCOLDS.

Where no definite attack can be discerned at any one point, and yet abuse upon abuse is heaped on a person, which neither singly nor collectively amount to an actionable wrong, this is called more properly railing or scolding than slandering. It is a species of indeterminate slander, carried on with mechanical vehemence, and explodes in the air with sound and fury, rather than causes any appreciable injury to the individual aimed at. And yet this noise, which constantly threatens and only sometimes reaches the point of slander, is deemed by the law a nuisance, and so punishable in another form. Scolding is an indictable offence. It is peculiarly a female's offence, and the common law punishment was ducking, or, as Coke explained, the female was put in a ducking-stool and soused in water. In one case, in 1705, the scold, after conviction, wanted to argue her writ of error in person, and Holt, C. J., gave her time to do so, for he added, that "perhaps ducking would rather harden than cure her, and if she were once ducked she would scold on all the days of her life." She afterwards succeeded in setting aside the judgment on the ground that she had been called *rixa* and not *rixatrix*, that is to say, she had been called, in bad Latin, the wrong word for female. The indictment soon afterwards was expressed in English, and the same error was thus not likely again to recur. Another flaw in this indictment was said to be, that it ought to have been alleged that her scolding was a common nuisance to the neighbours, for "that all scolding was not indictable, but only such as was intolerable

to neighbours." Scolding of this last kind is thus indictable as a nuisance, but not actionable like a slander.—Paterson's Lib. Press, 147.

A MILITARY LOOKING PERSON UNABLE TO PAY A FINE.

Lord Mansfield had tried a man for an assault, and on his being convicted, and afterwards brought up for judgment, an affidavit was produced in which he stated that he was wholly unable to pay any pecuniary fine. The case was such that the court thought imprisonment an unsuitable punishment. The prisoner stood proudly erect, having a very large pair of whiskers and moustaches, of which he seemed to be especially proud, and of which he used to boast. This being mentioned to Mr. Dunning, the counsel for the prosecution, he suggested to the court that, "as the prisoner had very *fine* moustachios and whiskers, perhaps his lordship would take the punishment out of these, and order him at once to be *shaved*!"

PUBLIC PETITION IN FAVOUR OF CONVICT.

A blacksmith of a village in Spain murdered a man, and was condemned to be hanged. The chief peasants of the place joined together and begged the Alcalde that the blacksmith might not suffer, because he was necessary to the place, which could not do without a blacksmith to shoe horses, mend wheels, and such offices. But the Alcalde said, "How then can I carry out the law?" A labourer answered, "Sir, there are two weavers in the village, and for so small a place one is enough; you may hang the other."

METHODS OF DISCOVERING WHO WAS THE CRIMINAL.

The French police were unable, in 1780, to discover who were the perpetrators of an extraordinary robbery at Lyons, and having exhausted every means of discovery, at length resorted to the expedient of sending one of their officers to the Bicetre, disguised as a prisoner to undergo a sentence. While in the company of all the thieves, he performed his part very well, and interested his audience by the narrative of the exploit of the robbery, in all its

clever details. The assembly of connoisseurs were enchanted with the story, and, in the exuberance of delight, one of them exclaimed, "It is only Philip who could execute such a stroke as that!" This exclamation gave a clue at once to the real perpetrator, Philip being found to have been the leader of the gang.

Voltaire says he knew a physician in London named Brown, who had once managed a sugar factory at Barbadoes, where the negroes worked. Having been robbed of a considerable sum, and being unable to detect the thief, he called all the slaves together, and said this: "My friends, the great serpent appeared to me in the middle of the night, and told me that the person who stole my money should at this very moment have a feather on the tip of his nose." The thief immediately put his hand to his nose. "It is you, sirrah," cried the master, "who robbed me." The negro confessed the theft, and gave up the money. Voltaire adds, that tricks like these would not succeed twice, except with negroes.

A jeweller went to a foreign country, carrying a large stock of diamonds and valuable trinkets, and accompanied by his son and a slave as his only companions. The stock was disposed of and they were preparing to return, when the jeweller died, and then there was a valuable treasure to be disposed of by the legal authority of the place. The slave resolved, as they were all strangers, to set himself up as the son of the jeweller. The true heir denied this, and the dispute went on, the judge having no means of deciding it. At last he directed that the two claimants should stand behind a curtain, and after stating each his case, to project his head outside, and the judge would then cut off the head of the one who proved to be the slave. The officer stood with a drawn scimitar, watching both, and ready to spring at a given signal. Suddenly the judge called out: "Enough, enough! strike off the villain's head." The impostor, terrified at the brandished weapon, and being taken unawares, at once drew back his head, while the real heir, trusting to his honesty, was unmoved. The judge immediately recognised the true heir, and dealt out the punishment to the impostor.

A LITIGANT'S WITNESSES BEING ALL DEAD.

Voltaire reports the following case in an Eastern court. A client had lent 500 cunces of silver to a Jew, before two witnesses. But both witnesses being dead, he saw immense difficulty in proving his case. Zadig having ascertained that the silver was lent on a large stone near Mount Oreb, promised to plead the case. He addressed the judge: "My lord, it is true that both the witnesses are dead, but what your lordship is asked to do is to direct that the large stone on which the silver was weighed shall be brought before the court. The Hebrew and I will stay until it arrives, and I will send for it at my client's expense." The judge consented, and took some other cases to go on with, and near the rising of the court the judge asked Zadig if the stone had arrived. The Jew then impatiently interrupted: "Oh, your lordship will wait long enough for that; it is six miles off, and it will take fifteen persons to remove it." Zadig then retorted: "Now, my lord, the stone, as I said, is of a truth a witness, and this Jew cannot deny the debt any longer." The judge was convinced that it was so, and ordered the Jew to be chained to the stone till he paid the debt; and the latter, being disconcerted by his inadvertent admission, at once confessed the whole truth, and paid the debt.

PATCH, THE LEFT-HANDED MURDERER.

When Patch was charged with murder, his solicitor carefully examined the premises and situation, and came to the conclusion that the murderer must have been a left-handed man. The solicitor informed Serjeant Best, in consultation, that he had noticed Patch, when taking his dinner, using his knife with the left hand. In a conference before the trial, the serjeant pressed the prisoner to say whether he was not left-handed, but he protested he was not. When the prisoner was arraigned at the bar on the day of trial, and was called on to plead, he answered, "not guilty," and at once, of course unconsciously, held up his *left hand*.

MURDER WILL OUT.

In 1789, a man named Home had become involved in a dispute about poaching, which led to a prosecution for slander in the Ecclesiastical Court, and in course of the litigation a casual remark was made by a witness that Home long ago starved his child to death. This led to a prosecution, and Home was tried and found guilty of the murder of his child, which had been committed thirty-five years before that date.

AFTER BEING HANGED COMING ROUND.

In 1728, Margaret Dickson, a married woman, was tried at Edinburgh for child murder, and was found guilty and condemned to be hanged. She was hanged accordingly, and the body cut down and put in a cart to be sent to her native place to be buried. The men in charge stopped the cart at a public house on the road, and, after they had refreshed themselves, were about to resume the journey when they saw the coffin moving, which frightened them dreadfully. One had presence of mind to uncover the coffin and take her out, when she was bled and put to bed, and next morning she was able to walk. The Crown authorities resolved not to molest her further, and she was again married to her husband and lived thirty years longer.

THE ETIQUETTE OF THE SCAFFOLD.

John Ketch had succeeded to the office of executioner for the city of London, and became so noted that his name for a century and a half afterwards became an official designation. There was a code of etiquette for the scaffold. When different grades of peerage met their fate together, the duke was first beheaded, then the earl, then the baron. Capel, when once about to address the mob with his hat on, was ordered by the executioner to take off his hat first. When the Earl of Kilmarnock offered to Baron Balmerino the precedence, the sheriff objected, and would not permit the earl to be beheaded last. On one occasion a chimney-sweep and a highway-

man were taken to Tyburn on the same cart up Holborn Hill. The highwayman said to the sweep, "Stand off, fellow;" the latter retorted, "Stand off yourself, Mr. Highwayman; I have as good a right to be here as you have."

VIVISECTION AND DISSECTING BODIES OF CRIMINALS.

The practice of dissecting bodies of dead convicts was once thought capable of being extended to the living bodies, as subjects for vivisection or experiment. It is said Maupertuis suggested that criminals, whose lives were forfeited, should be subjected to medical experiments for the benefit of science. Probably that notion once haunted the minds of legislators in England. It seems once, at least, to have occurred to the government of this country, that it might be useful to try experiments on the bodies of condemned criminals, and reserve them for that purpose, so as to extort some value to their kind, and a return for all the trouble they had caused to their fellow creatures; a return they were unwilling and unlikely to offer voluntarily. In 1721, the crown asked the opinion of the law officers, whether the lives of such men might not be spared on condition of their submitting to experiments for inoculation with small-pox. Raymond, C. J., and Hardwicke, L. C., then law officers, went the length of advising his Majesty, that as the lives were in his power, he could grant a pardon to them on any lawful condition, and they thought this was a lawful condition. Yet this opinion was without any apparent authority, and revolting to common sense. At no period, even of the most slavish ascendancy of the feudal law, was it ever assumed or contended that the bodies of men, dead or alive, criminal or non-criminal, belonged to the King, and Coke expressly lays this down. If the champions of liberty had, a century before, cleared the air by vindicating the doctrine that the King could not by word or writing imprison any man's body, even for an hour, how much less could the King order him to be kept for the purpose of subserving the experiments of surgeons, or torturing that body in the minutest degree? If the time shall ever come when the bodies of convicts may be utilized for science in this way, it will

require a legislator in Parliament first to propose and then to carry such a law; and it will be time enough to consider it, when it shall be submitted as a practical proposition.—I Paterson's Lib. Subj., 299.

VIVISECTION OF CONDEMNED CRIMINALS.

In France, in 1776, a galley slave condemned to death was promised life and liberty if he would allow himself to be dressed in a certain apparatus, and pushed off the top of a tower seventy feet high, for the purpose of ascertaining the resistance of the air. The slave agreed, and leapt from the top of the Arsenal of Port Louis, in Brittany, a height of 145 feet, dressed in a suit of feathered tissue. A strong cephalic cordial was given him, and he was pushed gently off, and after fluttering a little in a brisk wind, began to descend in a steady manner, amidst the acclamations of a great crowd. He took two minutes thirteen seconds to descend, and alighted on his feet in perfect safety. He was then bled, and conducted in triumph through the streets, with drums and trumpets, and entertained splendidly in the Town Hall. A collection was made, with which and the King's pardon in his pocket, he set forth for Paris next day.

A PRISONER WHO REASONED TOO WELL AT THE TREE.

In 1738, George Manley was executed at Wicklow for murder, and behaved in a strange and undaunted manner, and at the tree spoke thus: "My friends, you assemble to see—what? A man take a leap into the abyss of death! Look, and you shall see me go with as much courage as Curtius, when he leapt into the gulf to save his country from destruction. What will you see of me? You say, that no man without virtue can be courageous! You see I am courageous. You'll say I have killed a man. Marlborough killed his thousands and Alexander his millions! Marlborough and Alexander, and many others who have done the like, are famous in history for great men. Aye, that's the case—one solitary man. I'm a little murderer, and must be hanged; Marlborough and Alexander plundered countries; they were great men. I

ran in debt with the ale-wife, I must be hanged. How many men were lost in Italy, and upon the Rhine, during the last war for settling a King in Poland? Both sides could not be in the right! They are great men; but I killed a solitary man—I'm a little fellow. What is the difference between running in a poor man's debt, and by the power of gold or any other privilege preventing him from obtaining his right, and clapping a pistol to a man's breast and taking from him his purse? Yet the one shall thereby obtain a coach, and honours, and titles; the other, what?—a cart and a rope. Don't imagine from all this that I am hardened. I acknowledge the just judgment of God has overtaken me. My Redeemer knows that murder was far from my heart, and what I did was through rage and passion, being provoked by the deceased. Take warning, my comrades; think what would I now give that I had lived another life!"

THE MAID AND THE MAGPIE THIEVES.

The danger of circumstantial evidence is illustrated by the French trial of a maidservant for robbery of some forks, from a citizen of Paris. At the trial the circumstances were so strong against her that she was found guilty, and was executed. Six months afterwards the forks were found under an old roof, behind a heap of tiles, where a magpie used to go. When it was discovered that the innocent girl had been unjustly condemned, an annual mass was founded at St. John-en-Grese, for the repose of her soul.

THE PILLORY AS A PUNISHMENT.

No punishment seems to have been more thoroughly appreciated, admired, and maintained among mankind as the perfection of reason, than the pillory; and from the universality of its acceptance throughout the world, its ingenious varieties, and constant and uniform tendency, it approaches as near as possible to a law of nature. In order to attract the greatest contempt in the most public and conspicuous way upon an offender, to rivet the gaze of the rabble upon him, and to expose him helplessly to their derision, their kicks and cuffs, few implements so

rude as this in structure have done so much rough work in their time. And yet modern civilisation utterly recoils from its whole *rationale*, its beginning, its middle, and its end. Cook said that the pillory was a punishment first invented for " mountebanks and cheats, that having gotten upon banks and forms to wrong and abuse the people, were exalted in the same kind, to stand conspicuous to the view and open shame of the people." This was ingenious, but not quite correct. The pillory was usually a combination of planks put so as to inclose the head and feet and hands of the prisoner in a fixed position, so as to be exposed to the public gaze, and so as to attract public contempt; and a license was allowed to bystanders, which was largely taken advantage of, to throw filth and rubbish at his head. In China and other countries a portable pillory or cage, called the cangue, was used, consisting of a wooden collar, which the delinquent was made to carry for a prescribed period and distance each day, and to sleep in at night, and so close fitted that the hand could not be raised.

Lord Macclesfield had, in 1719, expressed his disapproval of sending state prisoners to this punishment. In 1770, it was noticed that Wilkes, as a convicted libeller, was spared this part of the punishment. In 1791 Pitt said he dissuaded the government from the too frequent use of the pillory. And Burke had condemned it before that date. In 1812, Lord Ellenborough sentenced a blasphemer to eighteen months' imprisonment, and to stand in it once within each month between twelve and two. And in 1814, the same judge, still unconscious of the way in which public opinion was tending, sentenced Lord Cochrane, who had been convicted of a conspiracy to spread false news, to stand in the pillory. And it is said the last instance of this punishment was in 1816. When the Bill was brought into Parliament to abolish it, Lord Ellenborough said it had existed since 1269, and was most admirable for perjury and fraud; and he and Lord Eldon resolutely defended it. In 1816 the punishment was expressly abolished, except as to perjury and suborning of witnesses. And in other cases that Act directed, that, where the pillory then stood as part of a punishment, a fine or imprisonment might be substituted

for it by the judge. But in 1837 it was utterly abolished as a punishment for any offence, and it is said that it had been already abolished in France in 1832.—2 Paterson's Lib. Subj., 281.

THE PILLORY DEFENDED BY THURLOW.

Thurlow, in a manner which astonishes a modern Attorney-General, eagerly urged that the defendant, Horne Tooke, who was an ordained clergyman of the Church of England, who was a scholar and a gentleman, should be set in the pillory. Speaking in aggravation of punishment, after observing that any fine would be paid by a seditious subscription, and that imprisonment would be "a slight inconvenience to one of sedentary habits," he thus proceeded, "Pillory, my lords, is the appropriate punishment for this species of offence, and has been so these two hundred years, not only while such prosecutions were rank in the Star Chamber, but since the Star Chamber was abolished, and in the best times since the Revolution. Tutchins was set in the pillory by Chief Justice Holt. That libeller, to be sure, complained of being subjected to the punishment which he said ought to be reserved for fraudulent bakers. He conceived that the falsifying of weights and measures was a more mechanical employment than the forging of lies, and that it was less gentleman-like to rob men of their money than of their good name. But this is a peculiarity which belongs to the little vanity which inspires an author, and it made no impression upon Sir John Holt, whose name will live with honour as long as the English constitution. Government cannot exist unless, when offences of this magnitude are presented to a court of justice, the full measure of punishment is inflicted upon them. Let us preserve the restraint against licentiousness, provided by the wisdom of past ages. I should have been very sorry to have brought this man before you, in a case attended with so many aggravations, if your lordships were not to show your sense of his infamy by sentencing him to an infamous punishment." Such was the Attorney-General's contention. The sentence, however, was only a fine of £200,

and a year's imprisonment ; and even Dr. Johnson, inquiring about it, said, "I hope they did not put the dog in the pillory ; he has too much literature for that." —5 Camp. Chanc., 518.

With regard to the sentence of the pillory pronounced on Lord Cochrane, in 1814, Lord Dundonald, in his Autobiography of a Seaman, explained as follows: "This vindictive sentence the government did not dare to carry out. My high-minded colleague, Sir F. Burdett, in the representation for Westminster, told the government that if the sentence was carried into effect he would stand in the pillory beside me, when they must look to the consequences. What these might have been in the then excited state of the public mind, as regarded my treatment, the reader may guess."

AN ASTUTE WOMAN ON THE PILLORY.

Mrs. Beare, in 1732, was convicted of inciting a wife to poison her husband, also of child-murder ; and was ordered, as part of the punishment, to stand in the pillory two market days at Derby. The first day the populace so pelted her with eggs, turnips, and so forth, that she disengaged herself and jumped among the crowd, when she was carried back to prison. The second day of her appearance, as soon as she mounted, she kneeled down and begged mercy of the outrageous mob. The officers, finding it difficult to get her head through a hole, pulled off her head-dress, and found a large pewter plate beat out to fit her head, and which was thrown amongst the people. As soon as she was fixed, such showers of eggs, turnips, potatoes, etc., were thrown, that it was expected that she would not be taken down alive. She lost a great deal of blood, which, running down the pillory, a little appeased their fury. Those who saw her afterwards in the gaol said she was such an object as was not fit to be looked on.—Gent. Mag.

LIBEL AND ITS PUNISHMENTS.

It appears that the first libeller sentenced to the pillory by the Star Chamber was Baker, in 1562. For a seditious libel against the judges and Privy Council, one Perkins

was fined £3,000; and for writing an abusive letter to an earl, the defendant was fined £5,000, besides being ordered to acknowledge on his knees his offence to the King and the lords of the court. And Sir W. Williams, Speaker of the House of Commons, was in 1685, for publishing Dangerfield's Narrative by order of the House, fined £10,000 by the court of Queen's Bench.

As to corporal punishment, the pillory was apparently deemed the appropriate punishment, or part of it, and was part of the common law punishment, and long practised. And in 1789 the publisher of the *Times* was ordered, for libels on two royal dukes, to stand in the pillory at Charing Cross. But it was before that time an unreliable mode of punishment. When Williams, the printer of the *North Briton*, No. 45, was sentenced and put in the pillory, the mob greeted him with acclamations, and raised £200 for him on the spot. In 1791, Macdonald, A. G., told the House of Commons that there had been in the preceding thirty-one years, seventy prosecutions for libel, of which fifty were convictions, and in five cases pillory had been added to imprisonment. The punishment of pillory was, however, wholly abolished in 1816.

It is not unusual to suppose, that there is no limit to the discretion of the court as to the extent of the punishment, whether in the amount of the fine, or the length of the imprisonment, which may be imposed for libel, such being what is called the punishment at common law. It is true, that in the case of defamatory libels, there is now an extreme limit to imprisonment, but not as to seditious or blasphemous libels.—Paterson's Lib. Press, 225.

A PRISONER HELPING HIS COUNSEL.

A prisoner of seventeen, in a Scotch court, was charged with picking a gentleman's pocket. The witnesses for the prosecution gave their evidence, and the prosecuting counsel commented on it, and clearly demonstrated the prisoner's guilt. To all this the prisoner listened with great indifference, but when the counsel who defended him stood up to address the jury, the prisoner leaned forward with the greatest interest. His counsel elo-

quently denounced the opposing witnesses, and the unreliable nature of their evidence, and warming with his subject, exclaimed: "If this young man had taken the money, where, I ask, could he have placed it? Not in his pockets, for you know they were likely first to be examined! Not in his shoes, for these, too, would for a certainty be also examined! Where then, I say, gentlemen of the jury, where could this lad have stowed away the money? Where was there a place he could have found to hide it away?" At this point the counsel paused rather longer than usual, and the prisoner, fearing that his counsel was actually waiting for assistance, and was at a loss, exclaimed: "I put it in here, sir!" pointing to an inside pocket.

JUDGE FAVOURING A DRUNKEN PRISONER.

Lord Hermand, a Scotch judge, when a prisoner, for killing his companion in a drunken brawl, got a mild sentence from his brother judges, felt that discredit had been brought on the cause of drinking, in which he himself greatly excelled. He had no sympathy with the tenderness of his temperate brethren, and was vehement for transportation. "We are told that there was no malice, and that the prisoner must have been in liquor. In liquor! Why, he was drunk! And yet he murdered the very man who had been drinking with him! They had been carousing the whole night; and yet he stabbed him, after drinking a whole bottle of rum with him! Good God! my laards, if he will do this when he's drunk, what will he not do when he's sober?"—Cockburn's Mem., 140.

AN IRISH PRISONER ASKED IF HE WAS GUILTY.

An Irish prisoner was charged with an offence, and, as usual, was asked: "Are you guilty or not guilty?" Pat replied: "Ah, sure now, isn't it the jury that's put there for to find that out?"

INEQUALITY IN DISCRETIONARY PUNISHMENTS.

The wide margin allowed to the discretion of judges in punishing many offences was forcibly illustrated by two cases at the beginning of this century. Two men were

detected stealing fowls in Suffolk. One of them was apprehended on the spot, and tried and convicted before Justice Buller, who, thinking the crime of no great magnitude, sentenced the prisoner to three months' imprisonment. The other man was afterwards apprehended, and convicted also of the offence before Justice Gould, at the next following assizes, when he, entertaining a different estimate of the offence, sentenced the unfortunate man to seven years' transportation. It so happened that the first man was just leaving prison, after completing his service there, as the other was setting out for Botany Bay to commence his.

HANGED THAT HORSES MAY NOT BE STOLEN.

A man was convicted of horse-stealing, and being asked what he had to say why sentence of death should not be passed upon him, answered, that it was hard to hang a man for *only* stealing a horse. Justice Burnet thereupon said, "Man, thou art not hanged only for stealing a horse, but that horses may not be stolen." This was at the time thought by many to be a wise reason for all penal statutes. But Benjamin Franklin says the man's answer, if candidly examined, was reasonable, as being founded on the eternal principle of justice and equity, that punishments should be proportioned to offences; and that the judge's reply was brutal and unreasonable.—B. Franklin's Essays.

A CONDEMNED PRISONER AND HIS AUNT.

In 1699, all the talk of the town was about a tragical piece of gallantry at Newgate. A bastard son of Sir George Norton was under sentence of death for killing a dancing master in the street. It being signified to the young man that he was to die the next day, his aunt, who was sister to his mother, brought two doses of opium, and they took it between them. The ordinary came soon after to perform his functions, and found them both strange. The aunt frankly declared she could not survive her nephew, her life being wrapped up in his; and he declared that the law having put a period to his life, he thought it no offence to choose the way he would go out of the world. The keeper sent for his apothecary, who

brought two vomits. The young man refused to take it till they threatened to force it down by instruments. He told them since he hoped the business was done, he would make himself and them easy, and swallowed the potion, and his aunt did the like. The remedy worked on her, and set her a vomiting, but had no effect on Mr. Norton, so that he dozed away gradually, and died next morning. He was fully resolved on the business, for he had likewise a charged pistol hid in the room. The aunt was carried to a neighbouring house, and watched. They say she is like to recover; if she does, it will be hard if she suffer for such a transport of affection!

THE MOB SHOUTING FOR JOY AT A VERDICT.

In 1796, when Stone was tried for high treason, in sending intelligence to the enemy, at the time the French were contemplating the invasion of Ireland, Mr. Erskine was for the Crown, and Serjeant Adair for the defendant. At eleven o'clock P.M. the jury returned into court, and brought in a verdict of "not guilty." The words were scarcely pronounced, when an instantaneous and unanimous shout arose in the court, which was loudly joined in by a numerous crowd in Westminster Hall. A gentleman named Thomson, being observed to join in the shout, was ordered by Lord Kenyon into custody. Thomson apologised to the court, by saying that his feelings on the joyful occasion were such, that if he had not given utterance to the joy which arose within his breast he should *have died on the spot*. Lord Kenyon replied that it was his duty to suppress the emotions of such tumultuous joy, which drew contempt on the dignity of the court. He then ordered Mr. Thomson to pay a fine of £20, and to remain in custody till payment. Thomson at once tendered his cheque for the sum, but this was refused, and he was taken into custody. The crowd without caught the spirit of those within, and the hall, as the judges retired, was filled with acclamations of joy.

PLEA OF INSANITY.

The Duke of Sussex told Mr. Adolphus, the criminal lawyer, as a curious anecdote, that when Earl Ferrars

had been convicted of murder, great efforts were made to obtain a pardon, on the ground that he was insane. His mother being applied to, and requested to write a strong letter on the subject, answered, "Well, but if I do, how am I to marry off my daughters?"

A PRISONER SAVED BY THE FINGER OF PROVIDENCE.

A man was tried on the Oxford Circuit by Mr. Justice Allan Park, for stealing faggots, and was defended by Charles Phillips. The prosecutor swore to the identity of the faggots. The judge, who had a habit of thinking aloud, muttered to himself, "Faggots! faggots! faggots are as like as two eggs." Fortunately, the prisoner's counsel heard this, and, in his address to the jury, commented with great vigour on the absurdity of any man attempting to swear to the identity of faggots. He said, "Why, what is there in faggots, gentlemen? Faggots! faggots! why, faggots are as like as two eggs!" The judge, on hearing this, suddenly called out: "Stop! Gentlemen, you must acquit this prisoner. There is a visible interposition of Divine Providence here to save an innocent man from unmerited punishment. I think it right to mention to you, gentlemen, this extraordinary circumstance. When I heard the prosecutor swear so unhesitatingly to the identity of these faggots, there passed through my mind the very identical observation just made by my very learned and much respected friend, Mr. Phillips. What he has just said at once occurred to me: 'Faggots! faggots! they are as like as two eggs.' Gentlemen, I cannot but think that the finger of Providence has pointed out to us both the right view of this singular case. Your obvious duty is to acquit this unfortunate man at the bar."

Mr. Richards, the prosecuting counsel, upon this, with some excitement, sprung to his feet, and knowing the judge's habit of muttering his thoughts, and having himself heard all that passed, was about to remonstrate against this interference with the jury. But the judge at once stopped him: "Now, my dear Mr. Richards, pray don't interfere with me. I know what you are going to say. You know your own poor dear old father was a judge

himself, and knew how to estimate these things." Mr. Richards' filial piety at once overpowered him, and he heard with composure the foreman say, "Not guilty."

A PRISONER QUIETLY TAKING A SUP OF BEER.

Mr. Walton, the reporter on the Midland Circuit, was at the trial of a man at Leicester, before Lord Wensleydale, one of the gravest of judges, for an attempt to murder. The prisoner had been taking his beer, and the prosecutor, by way of joke, tried to take a sup, and was struck very violently. After the prosecution closed, the judge told the prisoner he might address the jury; which he did, as follows: "My lord and gentlemen of the jury, you see as how I'm what is called a peaceable man, and was taking my drink quietly, as a man should do, when up comes this here prosecutor, and says he, 'I'll have a sup of your beer;' 'No,' says I, 'you shan't.' 'I will,' says he. 'Then,' says I, 'if you touch this 'ere mug of beer, I'll smash it on your blessed head.' This here man did take hold of my beer, and he got a knock on the head, but it were his own fault, as, gentlemen, why should he ha' provoked a man quietly a-drinkin' his beer? Now my lord," (turning to the judge) "I'm sure you likes a drop of good beer, don't yer, my lord? Well, then, my lord, if your lordship had a pot o' beer afore you at this moment, and that 'ere chap as is a-sitting by the side of yer," (turning to the High Sheriff) "should say, says he, 'I'll take a sup o' yer beer,' and you said to him, says you, 'If you do touch this here beer, I'll punch your blessed ribs,' in course you would, my lord." (Roars of laughter.) "Now, my lord, I've been called a quarrelsome man; that's a downright falsity, for look here, it ain't likely I can be a quarrelsome man when I've been bound over twenty-three times to keep the blessed peace!"

The prisoner was found guilty, and the fact was that he had been often bound over, and had long been notorious for his violence, and had almost killed the prosecutor. He was sentenced to fourteen years' transportation; and he made an attempt on his own life on leaving the dock, which, however, was unsuccessful.

SUICIDE, HOW FAR A CRIME IN ENGLAND.

It seems to have been a doctrine of common law at an early date, that murder included suicide, and that the latter act was *ipso facto* a felony. Hence, forfeiture of goods and chattels was a legal consequence of the act, and as the suicide was his own executioner, the forfeiture accrued on the act, since conviction was rendered impossible. But though trial was superseded, an inquisition by the coroner was held on the body. And yet this doctrine, that murder included suicide, tends to inconsistencies, and cannot be logically acted on. It is self-evident, however, that life is not a species of property, and that the law could never vindicate suicide on the plea, that one is thereby only destroying at pleasure what is one's own. It is in every view a wrongful act, or at least, one without legal excuse. Hence, when one person asks another to kill him, the law views it as nothing less than a murder, for one had no right to give such a command, and the other ought to have known the same, and ought not to have acted upon it. In such an event, he that is killed is deemed no suicide. but the killer is deemed a murderer.

Again, two persons sometimes agree to kill each other, and one may in the result be killed, and the other not. In this event, it may become necessary to ascertain in what position they stand, for it may often be difficult to decide whether one who is killed under such circumstances commits suicide, or is murdered by his confederate. This question will mainly turn on whether the person killed by his own hand and contrivance contributed in a material degree to his own death, or whether the material part was contributed by his partner. Each is considered the murderer of the other, and if the purpose is only partly executed, this is the footing on which the mutual guilt is judged.—I Paterson's Lib. Subj., 399.

A DEAF JUDGE FINING A SAUCY PRISONER.

Sir John Henderson, of Fordell, a zealous Whig, had long nauseated the Scotch civil court by his burgh

politics. Their lordships of the bench had once to fix the amount of some discretionary penalty that he had incurred. Lord Eskgrove, the racy judge at that time, began to give his opinion in a very low voice, but loud enough to be heard by those next him, to the effect that the fine ought to be fifty pounds; when Sir John, with his usual imprudence, interrupted him and begged him to raise his voice, adding that if judges did not speak so as to be heard, they might as well not speak at all. Lord Eskgrove, who could never endure any imputation of bodily infirmity, asked his neighbours, "What does the fellow say?" "He says that, if you don't speak out, you may as well hold your tongue." "Oh, is that what he says? My lords, what I was sayingg was very simpell; I was only sayingg that in my humbell opinyon, this fine could not be less than two hundred and fifty pounds sterlingg"—this sum being roared out as loudly as his old angry voice could launch it.—Cockburn's Mem., 123.

SETTING UP THE DEFENCE OF SOMNAMBULISM FOR A CRIMINAL.

Rufus Choate, the great American advocate, was strongly pressed to undertake the defence of a man, Tirrell, charged with the murder of his mistress, and he was told that the act was done while the prisoner was in a fit of somnambulism. The evidence at the trial showed that Tirrell, who was a married man, was seen in the house where the deceased was at nine o'clock at night. There was no evidence when he left; but next morning, about four o'clock, some one was awoke by a heavy noise, as of one falling, and half-an-hour afterwards a person was heard to leave the house. A groan was also heard, and soon a cry of "fire" from one of the inmates. The fireman entered and put out the fire, and found the prisoner's mistress lying, with her throat cut and a razor and blood, on the bed: there were matches on the straw bed, which was partly burned. Part of the prisoner's apparel was found in the room. About five A.M. of the same morning Tirrell called at a stable, with a wild appearance, saying he wanted a conveyance, as he had got into trouble, and that somebody had come into his room and tried to murder him.

There was strong prejudice against Tirrell; but there being good evidence that he was subject to fits of somnambulism all his life, and to act violently in such fits, Choate made a powerful defence, achieving his most difficult task, concluding thus: "Under the iron law of old Rome, it was the custom to bestow a civic wreath on him who saved the life of a citizen. Do your duty this day, gentlemen, and you too may deserve the civic crown."

The jury, after two hours' deliberation, gave a verdict of "not guilty."

It appeared from subsequent facts that the verdict was considered right.

A SENTENCE FOR BIGAMY.

Justice Maule, who was a master of irony, pronounced sentence for bigamy in a case at Warwick, which was tried before the divorce law was altered. The sentence was as follows: "Prisoner, you have been convicted upon the clearest evidence of the crime of intermarrying with another woman, your lawful wife being still alive. You say your first wife left her home and young children to live in adultery with another man, and that this prosecution is an instrument of persecution and extortion on the part of the adulterer. Be it so. I am bound to tell you, however, that these facts form no defence. Every Englishman is bound to know that there is a remedy for every wrong, and I will tell you what you ought to have done. You should, on hearing of your wife's adultery, have commenced an action against the seducer, and obtained counsel and witnesses, so as to get substantial damages against the adulterer. You should then have employed a proctor and counsel in another suit in the Ecclesiastical Courts, so as to get a divorce *a mensû et thoro*. You should next have obtained a private Act of Parliament to dissolve your marriage. You might say that these proceedings would cost £1,000, and that you were not worth £100, or £10. It may be so. The law has, however, nothing to do with that. If you had taken the right course you would have escaped the serious crime of marrying another woman. The sentence of the court which I have to pronounce for this misconduct is, that you be imprisoned for one day."

SCROGGS' ADDRESS TO THE PRISONER.

When Stayle, the Roman Catholic banker, one of the Popish Plot victims, was found guilty, Scroggs, C. J., thus addressed him: "Now you may die a Roman Catholic, and when you come to die, I doubt you will be found a priest too. The matter, manner, and all the circumstances of the case make it plain. You may harden your heart as much as you will, and lift up your eyes, but you seem instead of being sorrowful to be obstinate. Between God and your conscience be it; I have nothing to do with that; my duty is only to pronounce judgment upon you according to law. You shall be drawn to the place of execution, where you shall be hanged by the neck, cut down alive, etc." Scroggs afterwards, because the prisoner's friends said mass for his soul, ordered the body to be taken out of the grave, and the quarters fixed on the gates of the city, and the head on a pole at London Bridge. He was so proud of his exploit, that he caused an account of the case to be published by authority.—State Trials.

IMPRISONMENT FOR DEBT.

The law of imprisonment for debt, which existed so long in England, the land of freedom, whereby a creditor enforced payment of debt by imprisoning his debtor for unlimited periods, is perhaps the most irrational that ever existed; even the ancient law, which made the debtor the slave of the creditor, far excelled it, for by compulsory service the slave might work off his debt, at least in part; but by the other process this was simply impossible. And to concuss an unwilling debtor to pay by punishing his body, tended only to exasperate him all the more. The law should have directed its whole energies towards the compulsory seizing of the debtor's property, if he had any, and if he had none, then by limiting the imprisonment and keeping some hold over his future acquisitions.

And what made the practice of imprisonment for debt still more scandalous was the total want of care taken by the law or the legislature, of the health, morals, or reasonable comfort of the prisoners, the creditor in some

cases finding them in food to a small extent only. Debtors were cooped like rats, rotting and starving, the prey of fever, hunger, cold, of the immorality of numbers closely crowded, of the brutality, and tyranny, and extortion of gaolers. Such a mode of legal redress, however, had long continued, and might have continued for ever, so far as the law was concerned, had it not been for Howard, the philanthropist; a man almost divine, and the glory of his race. He it was who first taught the nations the duty of humanity towards even the most destitute and degraded of beings; and showed how no debt was so great, no crime which could be named so foul, that the gates of mercy should be wholly shut on mankind.

The purposeless cruelty of imprisonment for debt was demonstrated in 1792, when a woman died in Devon gaol, after forty-five years' imprisonment, for a debt of £19. And when the Thatched House Society set to work to ransom honest debtors by paying their debts, they, in twenty years, released 12,590 at a cost of 45s. per head.

AN ENGLISHMAN'S HOUSE HIS CASTLE.

However specious may be this rule, that an Englishman's house is his castle, it has in practice sometimes been reduced to a very shadowy advantage. In one noted case, bailiffs had been watching day after day to get inside a debtor's house, and at last they saw an upper window open. One of the bailiffs brought a ladder and put it up to the window, intending to get into it, and so reach the debtor. The debtor's daughter, discovering the stratagem, naturally and dutifully tried to shut the window, and a scuffle ensued, during which the debtor himself came to her assistance, and a pane of glass was broken in the storming process. The bailiff then, with much ready wit, managed to put his hand through the broken window and touched the debtor, saying, "You are my prisoner," and forthwith descended the ladder, broke open the outer door of the house, and seized his debtor and conveyed him to gaol. It was held, in 1858, by three judges, and afterwards by five more on appeal, that the bailiff was quite right, and was justified in what he did, some of the judges saying that

it was proved that it was not the bailiff who had broken the pane of glass; and so, it having been accidentally broken, he had a right to avail himself of the opening and to touch the debtor; and a touch constituted in the eye of the law a legal and complete arrest.

Moreover, though a bailiff cannot break open the outer door of a debtor's house in order to arrest the latter for debt, he may, by any trick, stratagem, or falsehood try to get inside peaceably; and when once inside he can then break his way into all the inner doors and rooms. Or, if the bailiff has once got in and been forcibly turned out, he may again break his way back into the interior. And though the bailiff cannot break open the debtor's own house, yet he may break open the house of a third person to get the debtor if he is therein, the only condition in that case being, that before the bailiff breaks the outer door, he must first state his object and request peaceable entry. Nay, it seems the bailiff may even break into a third person's house to search for a debtor, if he has a reasonable ground to believe that the debtor is there; but this is a great risk, for if the debtor is not there, the bailiff is a trespasser. And an outhouse near, but not in the curtilage of the debtor's house, may be broken into to take him, because it is no part of the castle.—2 Paterson's Lib. Subj. 233.

A PRISONER CARRYING A JOKE TOO FAR.

Mr. Walton, in his Recollections of the Midland Circuit, gives the following report. A man was tried at Northampton for stealing a pair of shoes. The case for the prosecution had closed, and the prisoner being undefended by counsel, was thus addressed by the judge, Baron Alderson (who was the only judge who used to stick an eye-glass in one eye on most occasions), "Now, prisoner, is the time for you to say anything in your defence. Speak to those twelve gentlemen in the box. What have you to say as to those shoes?" *Prisoner*. "My lord, I only took them by way of a joke." *Judge*. "What, as a practical joke?" *Prisoner*. "Yes, my lord." *Judge*. "How far did you carry them?" *Prisoner* (off his guard). "A mile and a half, my lord." *Judge* (to

the jury). "I think that's carrying a joke too far. What do you say, gentlemen?" *Foreman* (after consulting with the other jurymen). "Guilty, my lord." *Judge* (to the prisoner). "Three months' imprisonment and hard labour."

A CLERGYMAN RECOMMENDED TO A PRISONER.

Lord Eskgrove, the Scotch judge, rarely failed to signalize himself in pronouncing sentences of death. It was almost a matter of form with him to console the prisoner, by assuring him that, "Whatever your religious *persuashon* may be, or even if, as I suppose, you be of no *persuashon* at all, there are plenty of reverend gentlemen who will be most happy for to shew you the way to yeternal life."—Cockburn's Mem., 124.

HANGED FOR LEAVING HIS LIQUOR.

A man who quits his friends too early is sometimes twitted with the fate of being hanged for leaving his liquor, like the saddler of Bawtry. The story was, that there was once a noted alehouse, called the "Gallows House," situated between the city of York and the local Tyburn, where malefactors were hanged, and where the convict and his friends always pulled up and took refreshment. A saddler, on his way to be hanged, refused this little regale, so that the procession hastened on to the fatal spot. He was no sooner executed than a reprieve arrived, and if he had stopped as was usual at Gallows House, and consumed some time and liquor there, the reprieve would have reached him and saved his life.

There was a similar half-way house at St. Giles', in London, called "St. Giles' Bowl," where the convict had a bowl of ale presented to him as "his last refreshing in this life."

A JUDGE INCAUTIOUSLY ASKING FOR AN OLD FRIEND.

When a man was tried at the Old Bailey for highway robbery, before Lord Chief Justice Holt, who had been very rackety in his youth, and knew some of the companions of the prisoner, the judge asked the prisoner

what had become of such and such persons mentioned. The prisoner replied: "Ah, my lord, they are all *hanged* but your lordship and I."

A GRATEFUL THIEF.

O'Connell defended a highwayman for robbery near Cork, and managed to get a verdict of acquittal. A year afterwards the same prisoner was in the dock, charged with burglary, and secured the services of O'Connell, who again so bewildered the judge and jury that the prisoner was acquitted. The prisoner soon after stole a collier brig, cruising along the coast, and again secured O'Connell as counsel, who made out to the satisfaction of the court, that the crime was committed on the high seas, and so was not within the jurisdiction of the court. So the prisoner was once more acquitted. The prisoner, on this third occasion, raised his hands and eyes to heaven, and said to O'Connell, "Oh, may the Lord long spare you—*to me!*"

Another prisoner who was defended by O'Connell, and was acquitted of horse-stealing, was so elated, that he called out to his counsel, "Och, counsellor, I've no way *here* to thank your honour. I only wish I saw you knocked *down in me own parish*, wouldn't I bring a faction to the rescue!"

A JUDGE AND CRIER CRITICISED BY A DEFENDANT.

Horne Tooke had been his own counsel in the action brought against him by Mr. Fox, for the expenses of the Westminster election petition, and thus began his address to the jury: "Gentlemen, there are here three parties to be considered; you, Mr. Fox, and myself. As for the judge and the crier, they are sent here to preserve order, and they are both well paid for their trouble."

A PRISONER WHO COULD FLY.

Jane Wenham was tried before Mr. Justice Powell, at Gloucester, on a charge of witchcraft. The witnesses for the prosecution swore that she could fly. The judge thought it best to ask the prisoner: "Prisoner, can you

fly?" "Yes, my lord." "Well, then you may; there is no law against flying." She lost her character, but the judge would not allow the jury to find her guilty, even by her own confession.

AN IRISHMAN CHARGED WITH BIGAMY.

An Irishman was charged before a magistrate with marrying six wives. The magistrate asked him how he could be so hardened a villain. "Please your worship," said the prisoner, "I was trying to get a *good one*!"

A PRISONER BEFORE A JOURNEYMAN JUDGE.

A serjeant of great experience, going the Oxford Circuit in the room of Lord Chief Justice Abbott, who was suddenly taken ill, a man capitally convicted, being asked if he had anything to say why sentence of death should not be passed upon him, exclaimed, "Yes; I have been tried before a *journeyman judge*."

A PRISONER ACCUSED OF DANGEROUS ELOQUENCE.

Henry Hunt, the famous demagogue, having been brought up to receive sentence upon a conviction for holding a seditious meeting, began his address in mitigation of punishment by complaining of certain persons who had accused him of "stirring up the people by dangerous eloquence." Lord Ellenborough, C. J. (in a very mild tone), observed, "My impartiality as a judge calls upon me to say, sir, that, in accusing you of that, they do you great injustice."

THE PRISONER'S WANT OF RESPECT TO THE PAPER CURRENCY.

Lord Campbell says, "He once heard a judge at Stafford conclude an address to a prisoner convicted of uttering a forged one pound note, after having pointed out to him the enormity of the offence, and exhorted him to prepare for another world: 'And I trust that through the merits and the mediation of our blessed Redeemer, you may there experience that mercy which a due regard to the *credit of the paper currency* of the country forbids you to hope for here.'"—2 Camp. C.J.s, 444.

HANGING A MAN FOR FASHION'S SAKE.

A prisoner was tried at the Old Bailey, before Lord Mansfield, for stealing in a dwelling-house to the value of forty shillings, when that was a capital offence. The judge advised the jury to find a gold trinket, the subject of the indictment, to be of less value than *forty shillings*. At this the prosecutor exclaimed, with indignation, "Under forty shillings, my lord! why the fashion alone cost me more than double that sum." Lord Mansfield calmly observed, "God forbid, gentlemen, that we should hang a man for fashion's sake!"

A PRISONER'S INTEREST IN HUMAN AFFAIRS.

A Jew had been condemned to be hanged, and was brought to the gallows along with a fellow prisoner; but on the road, before reaching the place of execution, a reprieve arrived for the Jew. When informed of this, it was expected that he would instantly leave the cart in which he was conveyed, but he remained and saw his fellow prisoner hanged. Being asked why he did not at once go about his business, he said, "He was waiting to see if he could bargain with Mr. Ketch for the *other gentleman's clothes*!"

POISONING WITH BAD WINE.

Lord Chief Justice Wilmot said he had to try a case at Warwick, which was an indictment against an innkeeper for poisoning some of his customers with his port wine, by which they had narrowly escaped with their lives. The indictment was quashed by the impudence of the fellow, who absolutely proved that there had never been a drop of real port wine in the hogshead.—1 Cradock Mem., 93.

THE JURY CARRIED AWAY BY SYMPATHY FOR PRISONER'S PARENTS.

Patrick Henry, the American advocate, and "orator of nature," had to defend a prisoner charged with murder of a companion during the night. The prisoner's character

being bad, there was great local prejudice against him. But, in a trial which lasted fourteen hours, Henry obtained such power over the jury, and painted with such pathetic colours the grief and dismay of the parents of the prisoner asking of the jury, "Where is our son? what have you done with him?" that they lost sight of the murder altogether, and melted with tears at the distress of the parents. In the end they found a verdict of manslaughter only.

PRISONER'S FRIEND BRINGS A MESSAGE FROM THE LORD.

When John Atkins was committed to trial for sedition, a friend of his named Lacy called at Chief Justice Holt's house in Bedford Row, and desired to see him. *Servant*. "My lord is unwell to-day, and cannot see company." *Lacy* (solemnly). "Acquaint your master that I must see him, for I bring a message to him from the Lord God." The Chief Justice, having been informed of this, and having ordered Lacy in and demanded his business, was thus addressed: "I come to you a prophet from the Lord God, who has sent me to thee, and would have thee grant a *nolle prosequi* for John Atkins, His servant, whom thou has cast into prison." *Holt, C. J.* "Thou art a false prophet, and a lying knave. If the Lord God had sent thee, it would have been to the Attorney-General, for he knows that it belongeth not to the Chief Justice to grant a *nolle prosequi*; but I, as Chief Justice, can grant a warrant to commit thee to bear him company." This was immediately done, and both prophets were convicted and punished.

PRISONERS AND THEIR TREATMENT IN PRISON.

Until the time of Howard, the world cared little what went on in prisons, and left the prisoner very much to the mercy of the gaoler. Constantine, it is true, ordered prisoners to be treated with humanity, though guilty, and to be kept in wholesome places; and extortioners were punished with death. In the earliest times of English law, very sound theoretical principles existed. At common law a right to redress was acknowledged, when a sheriff or gaoler pained his prisoner; and too great

pain or duress was punished capitally. And it was deemed an indictable offence at common law for a gaoler to punish his prisoner too heavily, or to confine him in a dungeon without cause, for there can be no prison within a prison; and the walls of the prison, if not high enough, must be made higher, rather than allow the gaoler to chain or iron the prisoner. Hence, if a gaoler treated a prisoner inhumanly and caused death, he was held guilty of murder, for it was not necessary that any stroke should be given to produce this effect. But, notwithstanding the most satisfactory theories, the practice in England, as elsewhere, was the worst possible. In 1661, it is related that when a prisoner was committed to the Gatehouse, Westminster, for libel, and had been locked up three nights in a room without chair or table, a sum of £7 11s. was demanded for present fees, that is to say, £5 to excuse him from wearing irons, the other items being for entrance, week's lodging, sheets, garnish money, and for turnkey fees. And the gaoler practically could enforce his will in the most tyrannical way. When the House of Commons Committee, in 1728, inquired into the subject, they found that the thumb-screw and torture were used at the pleasure of the gaoler, and prisoners before trial were loaded with irons. Since Howard laid bare prison life, to the astonishment of mankind, prisons have, it is true, been comparatively models of fair and considerate treatment.—2 Paterson's Lib. Subj., 263.

DOCTOR'S CERTIFICATE OF IMMINENT DANGER TO LIFE.

A highwayman named Bolland, who had been committed for trial, and confined in Newgate, sent for his solicitor, and wished very much to have his trial put off for a time. He wished to know how that could be done. The solicitor said there must be a medical certificate got from an apothecary that the prisoner was unwell. This was accordingly obtained; and the apothecary, after a suitable commencement, proceeded thus: "And the deponent verily believes, that if the said James Bolland is obliged to take his trial at the ensuing sessions, he will be in *imminent danger of his life!*" On hearing

this, the learned judge on the bench observed that he "verily believed so too!" but said that, nevertheless, he could not allow the trial to be further postponed.

JUSTICES OF THE PEACE PECULIAR TO ENGLAND.

In the reign of Edward III., the Chancellor acquired that most important and delicate function of appointing Justices of the Peace—a magistracy peculiar to the British Isles; the judges having a most extensive criminal jurisdiction, being generally without legal education, and serving without any remuneration, except the power and consequence which they derive from their office.—1 Camp. Chanc., 275.

LORD CHANCELLOR APPOINTS JUSTICES OF THE PEACE.

Since the institution of Justices of the Peace, in the reign of Edward III., instead of the Conservators of the Peace formerly elected by the people, to the Lord Chancellor has belonged the power of appointing and removing them throughout the kingdom. Upon this important and delicate subject he generally takes the advice of the Lord Lieutenant, or *Custos Rotulorum*, in each county; but when any extraordinary case arises, it is his duty, and his practice, to act upon his own judgment.—1 Camp. Chanc., 19.

CLERICAL JUSTICES OF THE PEACE.

One Dr. Warren was a divine in degree and profession, yet seldom in the pulpit or church, but a Justice of the Peace, and very pragmatical in secular business. "Well, sirrah," says he; "go your ways, I'll teach you law, I'll warrant you." "Sir," says the prisoner, "I had rather your worship would teach us some gospel."—Camd. Soc., No. 5.

A DESCRIPTION OF JUSTICES OF THE PEACE IN 1740.

Lord Chancellor Hardwicke was much annoyed by the state of some Justices of the Peace for Middlesex; and with a view to legislation, was furnished with the following account of one or two.

One Sax, a justice near Wapping, very poor and scandalous, lately a prisoner in the King's Bench for debt, now skulks about in blind alehouses, for debt, about Tower Hill and Wapping, and takes affidavits near the Victualling Office.

William Morris, son-in-law to Bishop Atterbury, takes yearly pensions of gaming houses and brothels, to remit their fines. He was lately prosecuted for tearing a leaf out of the parish book, and was fined, and the parish paid £500 in prosecuting him.

Ferdinando Springall, another justice, is an old debauched man (the atrocities are then described).

Anthony Wroth had ruined himself by gaming; was lately a prisoner in the Fleet, for debt. Since he came out of prison, he opened a shop in Red Lion Street, Clerkenwell, and lets out part of the house to a woman of ill fame.—1 L. Hardwick's Life by Harris, 391.

THE JUDGE AND THE SHERIFF.

Justice Buller, at his first assize town on the Oxford Circuit, was met by an unsophisticated sheriff, who bluntly demanded of his lordship (being rather under the middle stature) whether he was a *bonâ fide* judge (pronouncing *fide* as one syllable), as they had been so often fobbed off with serjeants in those parts. When assured, the sheriff took his seat beside the judge. A grave severity being seen on the judge's countenance, the sheriff expressed a fear that he had done something wrong. The judge replied: "It is certainly against etiquette on these occasions for the sheriff to take his seat fronting the horses, unless" (he put his hand on the sheriff as he started up) "unless invited by the judge, as I now invite you."

On another occasion the same judge, when sitting with the sheriff, after the topic of the weather had been exhausted, was asked whether his lordship had at the last assize town gone to see the elephant. The judge, with good humour, answered: "Why no, Mr. High Sheriff, I cannot say that I did, for a little difficulty occurred: we both came into the town in form, with the trumpet sounding before us, and there was a point of ceremony as to which of us should visit first."

LAWYER IN PARLIAMENT USING AN OATH.

Erskine, in opposing the Seditious Meetings Bill in Parliament, in 1795, said: "If the Government resolve to rob the people of their rights, the people will be justified in resisting such glaring oppression. I will say again and again that it is the right of the people to resist a Government which exercises tyranny. It is certainly bold to say that the people have a right to resist, and that they ought to rise; but there are some occasions which render the boldest language warrantable. 'If the King's servants,' said Lord Chatham, 'will not permit a constitutional question to be decided according to the forms and on the principles of the constitution, it must then be decided in some other manner; and rather than it should be given up—rather than that the nation should surrender their birthright to a despotic minister, I hope, my lords, old as I am, I shall see the question brought to issue, and fairly tried between the people and the Government!' Sanctioned by the sentiments of that venerable and illustrious man, I maintain that the people of England should defend their rights, if necessary, by the last extremity to which freemen can resort. For my own part, I shall never cease to struggle in support of liberty. In no situation will I desert the cause. I was born a freeman, and by God! I shall never die a slave!" —Parl. Hist.

IMPEACHMENT.

In the forty-second year of Edward III., while William of Wickham was Chancellor, occurred the first instance of a parliamentary impeachment. Criminal jurisdiction had been before exercised by the Lords, but not on the prosecution of the Commons. Sir John Lee was now impeached by the Lower House, for malpractices while steward of the household, and the punishment not extending to life or member, the Chancellor, though a priest, was not disqualified from presiding. Before the close of the reign the Commons preferred impeachments against many delinquents, for political and other offences, and the practice of impeachment, according to the pres-

ent forms of proceeding, was fully established.—1 Camp. Chanc., 275.

IF HOUSE OF LORDS CAN REVERSE ITS JUDGMENT.

Lord Lyndhurst, sitting on a Scotch appeal, said that the House of Lords, like any other court, might reverse its own judgments. Lord Chancellor Brougham, however, observed, "That power only belongs to inferior courts, and the most serious consequences would follow if it were assumed by this, the court of *dernier ressort*." Lord Campbell observes, "In truth, a power of reversing its judgments after they have been solemnly recorded does not belong to any court, high or low; and a solemn judgment of the House of Lords, after the termination of the session in which it has been pronounced, could only be reversed by Act of Parliament."

COURT THREATENING TO COMMIT THE SPEAKER.

When the disputes as to parliamentary privilege, arising out of the Aylesbury case, in 1704, divided the two Houses, and Holt, Chief Justice, was thought to be the champion of the House of Lords, a story was circulated that the House of Commons ordered the Speaker, with his robes and full-bottomed wig, to enter the Court of Queen's Bench and summon the Chief Justice to the bar, to answer for his contempts, whereon the Chief Justice was reported to have said this: "Go back to your chair, Mr. Speaker, within these five minutes, or you may depend upon it, I will lay you by the heels in Newgate. You speak of your authority, but I tell you that I sit here as the interpreter of the laws and a distributor of justice, and if the whole House of Commons were in your belly, I would not stir a foot." Whereupon the Speaker quailed and quietly retired.

There was not a word of truth in this popular story, though the House of Commons had committed the counsel engaged in the case. The Queen put an end to the session of Parliament, in order to get out of the difficulties in which the Houses were involving themselves.

PARLIAMENT QUESTIONING JUDGES AS TO THEIR JUDGMENT.

When the House of Lords took offence at Lord Chief Justice Holt having decided a question in his court which the House thought interfered with privilege, and summoned him to attend the House and be interrogated, he refused for the following grounds: "I acknowledge that I gave the judgment, and I gave it according to my conscience. We are trusted with the law: we are to be protected and not arraigned; we are not to give the reasons for our judgment in this fashion, and therefore I desire to be excused giving any. Your lordships constitute the highest court known in this kingdom, before which all judgments may be brought, and your lordships may affirm or reverse them as seems you good. I and my brother judges, according to immemorial usage, have a summons to attend in this House *ad consulendum*. Your lordships have an undoubted right to ask our opinion, with our reasons, on any question of law which comes before your lordships in *R. v. Knowllys*, and if your lordships ask my opinion upon it, I will most willingly render the reasons which induced me, according to my conscience, to give judgment for the prisoner. I did think myself not bound by law to answer the questions put to me. What a judge does honestly, in open court, he is not to be arraigned for."

The House then informed him that the questions asked him were not intended to accuse; but the judge answered: "besides the danger of accusing myself, I have other good and sufficient reasons for declining to answer the questions propounded to me."

The House dropped the matter, and the Chief Justice's popularity was greatly increased by this conduct.

PUBLISHING PARLIAMENTARY PAPERS WHICH ARE
LIBELLOUS.

How far a parliamentary paper, that is to say, a document submitted to the Parliament, and ordered to be printed and published for the public benefit, may be published with impunity by strangers, though the contents may be libellous to individuals, long caused doubt

to the courts, and gave rise to something approaching a conflict between them and the Parliament. During the controversy that arose out of the case of Stockdale, which had the effect of making Parliament and the courts of law take up opposite sides, and to act as if they were preparing for extremities, statesmen as well as lawyers were divided as to the correct view. One party urged the committal of the judges, and that nothing short of that course could terminate the issue. The other party confidently predicted disgrace and loss of popularity to the House of Commons, if any such course were resorted to. The subject was thoroughly discussed, and after many fluctuations, the happy thought at last was suggested and adopted of passing a statute, which had the effect of putting an end to the apparent conflict.

Pemberton, in course of the debates, maintained that the courts of law were the superior power in such a conflict. And Sugden urged that the House of Commons could not commit the judges, owing to the disgrace such a step would involve. The division of opinion between the statesmen and lawyers then in Parliament seemed to be as follows. On the side of Parliament: Peel, Lord J. Russell, Palmerston, Lord Stanley, Lord Howick, Campbell, Rolfe, Wilde, Follett, Lushington, O'Connell, Hume. In favour of the courts of law: Pemberton, Sugden, Goulburn, Gladstone, Disraeli, Brougham. On some of the minor incidents one or two of these occasionally changed sides.

A LORD LIEUTENANT OF A COUNTY DISMISSED BY THE CROWN.

In 1780, government being hard pressed upon the occasion of Lord Shelburne's motion, for an address to his Majesty, praying to be informed "by whose advice the Marquis of Carmarthen and the Earl of Pembroke had been dismissed from the office of Lord Lieutenant, by reason of their conduct in Parliament," the Lord President of the council, Lord Bathurst, declared, "he could say with truth, that after upwards of thirty years' public service, he did not know that he had ever made an enemy, or given just cause of offence, in any

public character he had filled; he disapproved of removing persons from their appointments under the Crown, except for misconduct or incapacity; but he thought the present motion highly objectionable, as it went to intrench upon the King's prerogative of choosing his own servants. This, like other prerogatives, might be abused, but it was necessary for the public good; and there was no pretence for saying that it had been abused in the present instance, as there was nothing to distinguish the removals which formed the subject of the present debate from a continued stream of precedents since the revolution, down to the present day."—5 Camp. Chanc., 466.

JUNIUS PROSECUTED FOR SEDITION.

The case of Junius' letter to the King, in which, as the Attorney-General urged, every bad quality was imputed to the King, and every good quality was denied to him, was a striking example of the difficulty of foreseeing how juries might deal with circumstances supposed to be so near the dividing line between lawful public comment and seditious excess. In the first of several trials for publishing that memorable letter, the jury found the publisher guilty. In the two other trials for the same publication, the jury, after deliberating seven and ten hours respectively, gave a verdict in favour of the publishers of not guilty. The other prosecutions in respect of the same libel were then abandoned by the advisers of the Crown without a trial, as not likely to be successful.—Paterson's Lib. Press, 90.

Moore says that Lord Brougham used to observe that Junius was much overrated. A strong corroboration of Francis being the author was, that Francis made a splendidly bound copy of Junius his first present to his wife on their marriage. Brougham was present when Rogers asked Francis if he was the author of Junius, thus, "There is a question, Sir Philip, which I should much like to ask, if you will allow me." "You had better not, sir," answered Francis; "you may have reason to be sorry for it." Brougham said he also once asked Francis if it was ridiculous to suppose that he (F.) might

be the author. "Why, sir," replied Francis, "if the world is determined to make me out such a ruffian, I can't help them." Brougham said that Francis never actually denied the charge, but at all times, in a sort of angry way, evaded it.

POLITICS VERSUS LAW.

Burke, at first, was disposed to slight Erskine. When told of Erskine's opinion about an impeachment abating upon the dissolution of Parliament, "What," said Burke, "a nisi prius lawyer give an opinion on an impeachment! As well might a rabbit, that breeds fifty times a year, pretend to understand the gestation of an elephant."

Erskine once followed Mr. Fox in a long speech. Pitt said, "The learned gentleman has followed his right honourable leader, running along the line of his argument, and, as usual, attenuating it as he went."

LAWYERS IN PARLIAMENT, AND ERSKINE'S FIRST SPEECH.

Pitt, the Prime Minister, evidently intending to reply to Erskine, sat with pen and paper in his hand, prepared to catch the arguments of this formidable adversary. He wrote a word or two. Erskine proceeded; but with every additional sentence, Pitt's attention to the paper relaxed, his look became more careless, and he obviously began to think the orator less and less worthy of his attention. At length, while every eye in the House was fixed upon him, he, with a contemptuous smile, dashed the pen through the paper and flung them on the floor. Erskine never recovered from this expression of disdain; his voice faltered, he struggled through the remainder of his speech, and sank into his seat dispirited and shorn of his fame. Pitt, it seems, had been once in a cause with Erskine, at Westminster, and attended a consultation. Erskine was the kindest of leaders, and the most gentle and encouraging to juniors; but, possibly, some of his vagaries had offended the precise and serious young gentleman, who, perhaps, felt somewhat of the alarm that the clients of a great advocate feel on attending a consultation on their case. Certain it is,

that Pitt never justly appreciated that illustrious man, and always took a pleasure in mortifying him in the House. —6 Camp. Chanc., 417.

KING, LORDS AND COMMONS.

Mr. Morton, chief justice of Chester, a barrister of some eminence, happened, in the course of a speech in the House of Commons, to introduce the words, "King, Lords, and commons;" to which he added, with his glance fixed pointedly on Pitt (the first), "or, as the right honourable gentleman would call them, 'Commons, Lords, and King.'" Astounded at this boldness, Pitt deliberately rose from his seat and called him to order. "I have frequently," he said, "heard in this House doctrines which have surprised me; but now my blood runs cold. I desire the words of the honourable member may be taken down." The clerks of the House having taken them down: "Bring them to me!" he said, in a voice of thunder. Morton, by this time, appears to have been frightened out of his senses, and began to stammer out his apologies. He meant nothing, he said; indeed he meant nothing. Pitt sank his voice almost to a whisper, "I do not wish," he said, "to push the matter further." Then assuming a louder tone of voice, he added, "The moment a man acknowledges his error he ceases to be guilty. I have a great regard for the honourable member, and as an instance of that regard" (here fixing a withering look at Morton), "when that member means nothing, I recommend him to say nothing."—I Jesse's Geo. III., 154.

LAWYERS NOT AT HOME IN HOUSE OF COMMONS.

Erskine, in a speech in the House of Commons, once observed in passing, that lawyers were not at home in that House. Burke retorted in a tone of triumph, that they only exercised themselves there in skirmishing with the rights of the Commons, with which in the other House they meant to carry on a war; all they could afford to give members there was a sort of Quarter Sessions law, and a law *minorum gentium*. "He believed

they were not at home there; they were birds of a different feather, and only perched in that House on their flight to another; only resting their tender pinions there for a while, yet ever fluttering to be gone to the region of coronets. Like the Hibernian in the ship, they cared not how soon she foundered, because they were only passengers; their best bower anchor was always cast in the House of Lords."

COUNSEL ON THE HUSTINGS.

When Sir Edward Sugden stood as a candidate for Weymouth, in the House of Commons, it was used as a taunt that he was nothing but a barber's son. Once in his speech, the taunt being again thrown out, he exclaimed: "Yes, it is true that I am a barber's son; but there is this difference between me and the gentleman who made this remark; that though I was a barber's son, I have risen to be a barrister; whereas, if he had been a barber's son, he would have remained a barber's son all his life."

PLAIN JOHN CAMPBELL ON THE HUSTINGS.

Lord Campbell, then Sir John Campbell, standing on the hustings, addressing the electors of Edinburgh, in 1834, began: "Gentlemen, electors of Edinburgh, and fellow countrymen, here is plain John Campbell before you as a candidate for the high honour of your suffrages, etc. . . . I must say that I think it rather hard on me to say that if I had been merely plain John Campbell I might have been elected, and that all hopes of my ambition being crowned with success must be for ever extinguished by the eminence to which I have had the good fortune to attain."

There was another counsel who insisted on being called "plain," after being a judge. When made a judge, John Heath was frequently invited to accept a knighthood, but he resolutely refused; and said he would live and die "plain John Heath." And an admirable judge he was said by his contemporaries to be. He was the first judge appointed by Lord Thurlow, in 1778.

EXCLUDING LAWYERS FROM PARLIAMENT.

Lord Commissioner Whitelock, during the Commonwealth, made a noble defence of the profession of the law. One of Cromwell's officers, an ignorant fanatical fellow, had made a motion, "that all lawyers should be excluded from Parliament, or at any rate, while they sit in Parliament, they should discontinue their practice;" introducing his motion with a violent invective against the conduct of lawyers, both in and out of the House, and being particularly severe upon their loquacity in small cases, and their silence when the lives of their clients were at stake. Whitelock showed that the multiplicity of suits in England did not arise from the evil arts of lawyers, but from the greatness of our trade, the amount of our wealth, the number of our contracts, the power given to every man to dispose of his property as he pleases by will, and the equal freedom among us, by which all are enabled to vindicate their rights by an appeal to a court of justice. He showed that the silence of counsellors on all cases was the fault of the law, which kept them dumb, and he ingenuously confessed that he could not make that objection, that a man for a trespass to the value of sixpence, may have a counsellor to plead for him; but where life and posterity were concerned, he was not of that privilege. What was said in vindication of that custom, that the judges were counsel prisoners, had no weight in it; for were they not to take the same care of all causes that should be tried before them? A reform of that defect he allowed would then showed the great services of lawyers in

Lieutenant-General Jones, and Commissary Ireton, and many other lawyers, who, putting off their gowns when the Parliament required it, had served stoutly and successfully as soldiers, and had undergone almost as many and as great hardships and dangers, as the honourable gentleman who had so much undervalued them. With respect to the proposal for compelling lawyers to suspend their practice while they sat in Parliament, he only insisted that in the Act for that purpose, it be provided that merchants should forbear their trading, physicians from visiting their patients, and country gentlemen from selling their corn or wool, while they were members of that House." He was loudly applauded, and the motion was withdrawn.

Lord Campbell says that "although on the rare occasions when it was my duty to speak, while a member of the House of Commons, I had the good fortune to experience a favourable hearing, I must observe that there has subsisted in this assembly, down to our own times, an envious antipathy to lawyers, with a determined resolution to believe that no one can be eminent there who has succeeded at the bar. The prejudice on the subject is well illustrated by a case within my own knowledge. A barrister of the Oxford Circuit, taking a large estate under the will of a distant relation, left the bar, changed his name under a royal license, was returned for a Welsh county, and made his maiden speech in top-boots and leather breeches, holding a hunting whip in his hand. He was most rapturously applauded, till he unluckily alluded to some cause in which he had been engaged while at the bar, and when it was discovered that he was a lawyer in disguise, he was coughed down in three minutes. It is certainly true, that success in one of these fields of exertion by no means proves a qualification to succeed in the other; for while some parliamentary orators, like Sir Robert Peel and Lord Stanley, would have been sure to have risen to the first practice in Westminster Hall, I could name others who have deservedly acquired a high reputation in the House of Commons, who, if they had continued in Westminster Hall, would never have been entrusted with a brief. In the other House of Parliament there is no such prejudice against the law."—3 Camp. Chanc., 48.

Probably the notion, that successful lawyers could not or would not succeed in the House of Commons, became most firmly rooted at the time when Erskine was thought to be less eminent in Parliament than at the bar, and when Pitt and Percival were thought to have left the bar, from an impression that politics was quite a different profession, and required different faculties in order to excel.

JUDGE COMPLAINED OF AS A POLITICIAN.

When Mr. Perry, the proprietor of the *Morning Chronicle*, was tried, in the year 1810, for a libel on George III., and was acquitted under the direction of Lord Ellenborough, Lord Campbell says that he happened to be sitting, along with several other juniors, immediately behind Sir Vicary Gibbs, the Attorney-General, who turned round to the bar, and said in a loud whisper, "We shall never again get a verdict for the Crown while the Chief Justice is in opposition." Yet the acquittal was allowed by all impartial persons to be highly proper, the alleged libel merely alluding, not disrespectfully, to the prejudices of the reigning sovereign against his Roman Catholic subjects. Gibbs had a spite against Ellenborough, who said of him that "his nose would take ink stains out of linen." Sir Vicary went generally by the *sobriquet* of "Sir Vinegar"; and one fine summer's day, looking more than usually acetous, the phenomenon was thus accounted for:

"The Sun's bless'd beam turns
Vinegar more sour."

—6 Camp. Chanc., 586.

THE WISDOM OF OUR ANCESTORS.

The stock phrase used by the opponents of law reform is "the wisdom of our ancestors." This celebrated phrase was first used by Sir W. Grant and Mr. Canning, in order to stop Sir Samuel Romilly's menaced innovation of subjecting men's real property to the payment of all their debts. Lord Brougham says: "Strange force of early prejudice—of prejudice suffered to warp the intellect while yet feeble and uninformed; and which

owed its origin to the very error that it embodied in its conclusions; that of making the errors of mankind, in their ignorant and inexperienced state, the guide of their conduct at their mature age, and appealing to those errors as the wisdom of past times, when they were the unripe fruit of imperfect intellectual culture."

THANKING A SUPPORTER AT THE HUSTINGS.

When Charles Yorke was returned member for Cambridge University, in 1770, he felt it to be his duty to go round among the members of the senate, and thank those who had voted for him. Among these was a gentleman who was noted for having the largest and ugliest face that had been seen by the men of his generation. The experienced counsel addressed him thus: "Sir, I have great reason to be thankful to my friends in general, but confess myself under a particular obligation to you for the very *remarkable countenance* you were kind enough to show me on this occasion."

A JUDGE TALKING NONSENSE ABOUT POLITICAL ECONOMY.

Chief Justice Kenyon presided at several trials of indictments for forestalling. In one case, John Risby was indicted for purchasing a quantity of oats, and selling them at a profit on the same day. The judge professed to know a great deal more than Adam Smith, at whose doctrine he sneered in this fashion: "I wish, gentlemen of the jury, Dr. Smith had lived to hear the evidence of to-day. If he had been told that cattle and corn were brought to market, and there bought by a man whose purse happened to be longer than his neighbour's, so that the poor man, who walks the streets and earns his daily bread by his daily labour, could get none but through his hands, and at the price he chooses to demand; that it had been raised 3*d.*, 6*d.*, 9*d.*, 1*s.*, 2*s.*, and more a quarter, on the same day; would he have said, there is no danger from such an offence?" The jury gave a verdict of guilty, and the judge added: "Gentlemen, you have done your duty, and conferred a lasting obligation on your country."

Sydney Smith says: "This absurdity of attributing

the high price of corn to combinations of farmers, and the dealings of middlemen, was the common nonsense talked in the days of my youth. I remember when ten judges out of twelve laid down this doctrine in their charges to the various grand juries on their circuits."

WHETHER AMERICA IS PART OF KENT.

During the arguments in Parliament, preceding the American war, one of those in defence of the Colonies was, that these Colonies were not represented in Parliament, and therefore taxation was incompetent. Sir James Marriott, a judge of the Admiralty, misapplying some idle fiction on another subject, put forward this as a reply: "Although it had been frequently pretended that the inhabitants of the colonies were not represented in the British Parliament, yet the fact was otherwise, for they were actually represented. The first colonization was by sovereign authority in Virginia, and the grants of those lands were expressed in the royal charter, 'to have and to hold of the King's majesty, as part and parcel of the manor of East Greenwich, in the county of Kent, etc.'; so that the inhabitants of America were represented in Parliament by the knights of the shire for the county of Kent."

This discovery of the sapient judge was greeted by vast merriment, which the Speaker could with difficulty suppress.

LORD THURLOW AND THE DISSENTERS.

When Lord Chancellor Thurlow, in 1788, received a deputation of leading dissenting divines, who were anxious for his support of Mr. Beaufoy's famous attempt to obtain a repeal of the Test and Corporation Acts, the deputies were Doctors Kippis, Palmer of Hackney, and Rees. Dr. Rees used to relate that after the Chancellor had heard him very civilly, he said: "Gentlemen, I'm against you, by G—. I am for the Established Church, d—n me! Not that I have any more regard for the Established Church than for any other church, but because it is established. And if you get your d—d religion established, I'll be for that too!"

CHAPTER IX.

*ABOUT RECREATIONS OF JUDGES AND
LAWYERS.*

RETIRING TO THE COUNTRY.

Sir Harry Moncrieff used to say, that no man long accustomed to the habits of our active city life of business could retire and muse in the country for six months without becoming an idiot.

AN OLD JUDGE ON RURAL BEAUTIES.

Judge Davis, when asked by a company of American brother lawyers as to the comparative advantages of different periods of life, replied, with his usual calm simplicity of manner, as follows: "In the warm season of the year it is my delight to be in the country; and every pleasant evening while I am there, I love to sit at the window and look upon some beautiful trees which grow near my house. The murmuring of the wind through the branches, the gentle play of the leaves, and the flickering of light upon them when the moon is up, fill me with an indescribable pleasure. As the autumn comes on, I feel very sad to see these leaves falling one by one; but when they are all gone, I find that they were only a screen before my eyes; for I experience a new and higher satisfaction as I gaze through the naked branches at the glorious stars beyond."

RETIRED LAWYERS.

Apart from politics, the conduct of Somers on retiring from the chancellorship was greatly to be admired, as being more rare among English lawyers, who generally,

while in practice or in office, devote themselves exclusively to professional avocations, and in their retirement, left without mental resources, waste their declining years in frivolous occupations or in vain regrets. Lord Campbell says that Lord Somers presents the *beau idéal* of an ex-Chancellor; active in his place in Parliament when he could serve the state, and devoting his leisure to philosophy and literature. He had long been a Fellow of the Royal Society; he now regularly attended its meetings, and assisted in its transactions; and being elected the President, he did everything in his power to extend its credit and its usefulness. Having held this distinguished post five years, he gracefully resigned it to Sir Isaac Newton. He lived much with literary men, and liberally aided such as were oppressed by poverty.

Sir Samuel Romilly was also an example of a lawyer in the largest practice not neglecting the cultivation of his mind in non-professional subjects. A bishop once wrote of him: "I remember many years ago travelling with Sir S. Romilly one stage in his carriage, which was filled with the best books of the general literature of the day. To a remark from me that I rejoiced to see that he found time for such reading, he answered, 'As soon as I found I was to be a busy lawyer for life, I strenuously resolved to keep up my habit of non-professional reading; for I had witnessed so much misery in the last years of many great lawyers whom I had known, from their loss of all taste for books, that I regarded their fate as my warning.'"

A SERJEANT REVELLING IN THE YEAR BOOKS.

Serjeant Maynard, a great black-letter lawyer during the Commonwealth, used to carry one of the Year Books (a large folio of dry and rambling law reports) in his coach to divert his travel, and he said he chose it before any comedy.—North's Guildford, 19.

ACCOMPLISHMENTS OF JUDGES.

Lord Chief Baron Pollock was one of the most dextrous imitators of handwriting, and used to amuse himself by sending letters in other people's names and handwriting so correct that the person imitated would

swear to its being his own work. Many practical jokes arose out of this little amusement.

Justice Maule was singularly dextrous in picking locks, and which he could not only open but close again, with no other appliance than a stout piece of wire. He had acquired the art by the frequent loss of his keys when at the bar. He used to tell the story how upon one occasion he astonished a country locksmith who had been called in and pronounced a portmanteau beyond his skill, and which the judge opened with ease.

Vice-Chancellor Wickens amused himself with binding books, at which trade he was an adept, and had all the elaborate tools and machines to expedite his work, and he turned out his volumes in masterly style.

REFRESHING ONESELF WITH WILLIAMS' "SAUNDERS."

Justice Patteson, when a student, was staying at a friend's house in the country, along with Chief Justice Dallas, who one rainy day proposed that they should read a little law together, and on being asked what it should be, said: "I believe our friend has a 'Saunders' in the house, and I think I should like to read Serjeant Williams' note on executory devises." The mention of the celebrated note leads to the statement of a tradition of a scene which is said to have occurred at Hereford Assizes. Serjeant Williams was opening a case before Lawrence, J., and after stating the limitations of a will, said they created an executory devise, on which Justice Lawrence said: "Surely, brother, it is a contingent remainder." The learned serjeant, continuing his address, again said that it was an executory devise, and the learned judge again suggested that surely it was a contingent remainder. Whereupon Serjeant Williams exclaimed, with some warmth, "*Upon my honour*, my lord, *it is* an executory devise." "Oh," said the judge, "if you say that, brother, I have *no doubt* that I am wrong!"

BLOOM WILLIAMS AT HOME.

Serjeant Williams, the Welsh counsel, and editor of

"Saunders," was a very handsome man, with a fine complexion, and he was commonly called on circuit, "Bloom Williams." His manners were most agreeable, though he was somewhat hot-tempered. He delighted in recalling the days of his youth, and used to narrate with much humour stories of his college adventures, and his experiences of the Carmarthen Circuit. He was fond of music and of poetry, and used to walk up and down the room in the evening, reciting "Lycidas," and favorite passages from Pope. Occasionally he loved to read out to his family, papers of Addison, from the "Spectator." His health was always delicate and difficult to manage. He used to say that he never got over the effect of over fatigue in having, when a youth, joined a party of college friends, who walked from Oxford to London (63 miles) in a single day.

LORD THURLOW'S JOKES WITH HIS FAVOURITES.

The following anecdote was related by Lord Eldon: "After dinner one day, when nobody was present but Lord Kenyon and myself, Lord Thurlow said, 'Taffy, I decided a cause this morning, and I saw from Scott's face that he doubted whether I was right.' Thurlow then stated his view of the case, and Kenyon instantly said, 'Your decision was quite right.' 'What say you to that?' asked the Chancellor from me. I said I did not presume to form a judgment upon a case in which they both agreed. But I think a fact has not been mentioned which may be material. I was about to state the fact and its reasons. Kenyon, however, broke in upon me, and, with some warmth, stated that I was always so obstinate, there was no dealing with me. 'Nay,' interposed Thurlow, 'that's not fair. You, Taffy, are obstinate, and give no reason; you, Jack Scott, are obstinate too; but then you give your reasons, and d—d bad ones they are!'"

THE JUDGE AT HIS DEVOTIONS.

Lord Alvanley, Chief Justice of the Common Pleas, was startled one evening, when at family worship, by hearing one of the servants, who, instead of attending prayers, was playing an instrument noisily in an adjoining

apartment. The judge paused in the middle of the prayer he was reading, and called out, "Will no one stop that fellow's d—d fiddling?"

A SCOTCH JUDGE AT HIS DEVOTIONS.

Lord Forglen, one of the Scotch judges, was a great original. Every Sunday evening he had with him his niece, Betty Kinloch, afterwards Lady Milton, also Charles Forbes, who went "out in 1715," and David Reid, his clerk. The judge had what he called "the exercise," a family worship which consisted in singing a psalm and reading a chapter, and his form of announcing it was this: "Betsy, ye hae a sweet voice, lift ye the psalm; Charles, ye hae a strong voice, read ye the chapter; and David, fire ye the plate!" This plate consisted of burnt brandy, which was in preparation for the company. Accordingly, all went on in due order, and whenever the brandy was ready, David blew out the flame, which was a signal to halt. The exercise then at once stopped, and they took their liquor.

TWO OLD JUDGES WALKING IN THEIR OWN GROUNDS.

Lord Forglen, a Scotch judge, was one day walking with a brother judge, Lord Newhall, in the latter's own grounds. Newhall was a grave and austere judge, while Lord Forglen was a medley of curious elements. As they were walking along a picturesque bend on the river side, Forglen said: "Now, my lord, this is a fine walk. If ye want to pray to God, can there be a better place? and if ye want to kiss a bonny lass, can there be a better place?"

AN AGED JUDGE REVISITING HIS OLD SCHOOL.

Lord Stowell's penurious habits were known to his friends; but when he visited, in his old age, the school at Newcastle, the old woman who showed him over the building, not being aware of his habits, was highly excited at the lively prospect she had of a handsome gratuity. She naturally expected half-a-crown, perhaps, since he was so great a man, five shillings. But as he lingered

over the desks, and asked a thousand questions about the fate of his old schoolfellows, the woman's expectations rose to fever heat—half-a-guinea—yea, a guinea—nay, possibly, since she had been so long connected with the school in which the great man took so deep an interest—a ten-pound note, or even some little annuity. At last the awful moment arrived, when he wished her good-bye very kindly, called her a good woman, and slipped into her hand a piece of money. It was *a sixpence*! His personal estate was soon afterwards proved at only £200,000.

THE JUDGES' FAVOURITE DISH.

Lord Eldon's favourite dish was liver and bacon. The Prince Regent once tempted him to a visit by promising him this dish. Lord Stowell also had a favourite dish, being a great eater; and it was a rich pie, compounded of beefsteaks and oysters. Two bottles of port were his usual accompaniment to a great quantity of pie. Lord Stowell could pen the neatest of periods, but his hands were usually dirty and unwashed, his shirt frill was usually tumbled and soiled with the evidences of his voracious banquets. He was careful of giving his own wine to guests; but when he dined out, he distributed and appropriated like a prince. As his little brother, Lord Eldon, once jocularly remarked, "his brother William could take any *given quantity* of wine."

A JUDGE SKILLED IN SALAD MAKING.

Thomas Manners Sutton was made Lord Chancellor of Ireland in 1807, and was an excellent equity judge. He prided himself most on his mastery of the art of making salads, and gave her first lesson in that art to Lady Morgan. But when he read a novel published by that lady, called "O'Donnel," which seemed to favour the then odious craze of Catholic emancipation, he was so disgusted that he ordered her book to be burned in the servants' hall; and vented his spleen by unbosoming to his wife this penitential remark: "I now wish I had not given her the secret of my salad!"

A JUDGE WHO WAS IN DEFENCE OF LOBSTER SAUCE.

The only occasion when Lord Ellenborough was ever seriously supposed to be swayed by his own interest, was in deciding whether sailors employed in the lobster fishery were privileged from being pressed into the Royal Navy. He had an extreme love of turbot with lobster sauce; and although sailors employed in the deep-sea fishing, where turbot is found, were allowed to be privileged from impressment, the Admiralty had issued orders for impressing all sailors employed in collecting lobsters on the rocks and bringing them to Billingsgate. Writs of *habeas corpus* having been granted for the purpose of discharging several who had been so impressed, the counsel for the Crown argued strenuously that upon the just construction of 2 Geo. III., c. 15, and 50 Geo. III., c. 108, they were not entitled to any exemption, not being engaged in the deep-sea fishing.

Lord Ellenborough said: "I think the policy of the legislature seems to have been directed to the better supplying the inhabitants of the metropolis and other parts of the kingdom with fish; and for that purpose to bring sound and well-flavoured fish to our markets at a moderate price. Then is not the lobster fishery a fishery, and a most important fishery of this kingdom, though carried on in shallow water? The framers of the law well knew that the produce of the deep sea, without the produce of the shallow water, would be of comparatively small value; and intended that the turbot, when placed upon our tables, should be flanked by good lobster sauce. 'Fisheries of these kingdoms' are words of a large scope, embracing all those fisheries from which fish are supplied in a fresh and wholesome state to the markets of these kingdoms; and all who are engaged in such fisheries are within the equity of the Act, and so exempt from impressment."

A SERJEANT WHO ALWAYS QUOTED HIS WIFE.

Lord Brougham says that Serjeant Topping, a leading counsel of the Northern Circuit during his time, was very impatient of contradiction, and always simmered with heat while his case was on. Law, afterwards Lord Ellen-

borough, said of him: "See, there sits Topping, taking fire by revolving on his own axis." The Serjeant had a strong sentiment of conjugal allegiance, and was constantly quoting what his wife said or would say on every transaction in which he was concerned. He daily wrote from circuit a long letter to her. If a jury gave a wrong verdict, he wrote and complained to Mrs. Topping. So, if any of the bar offended him. He always told his brethren, often threatened them, occasionally rewarded them with, some confidential disclosures such as these: "I assure you, I felt so much how kind you were that I wrote to Mrs. Topping;" "The vile fellow behaved very, very ill—I wrote to Mrs. Topping about it;" "Mrs. Topping felt my lord's behaviour so much she said she never would forget it;" "The fellow behaved so ill that Mrs. Topping vowed she never would speak to him again as long as she lived." These utterances were brought out in a *quasi* confidential and judicial tone, as if sealing the fate of each individual alluded to irrevocably for weal or woe. In the midst of a hot altercation between the bench and the bar, the Serjeant would call in his clerk to bring some of the stomach tincture, which it was always observed consoled him greatly; and it was known to adepts as only brandy and water.—2 L. Brougham's Works, 384.

A JUDGE KEEPING TO THE POINT AT DINNER.

Lord Tenterden, Chief Justice of England, had contracted so strict and inveterate a habit of keeping himself and everybody else to the precise matter in hand, that once, during a circuit dinner, having asked a county magistrate if he would take venison, and received what he deemed an evasive reply: "Thank you, my lord. I am going to take boiled chicken;" his lordship sharply retorted, "That, sir, is no answer to my question; I ask you again if you will take venison, and I will trouble you to say yes or no, without further prevarication!"

THE LORD MAYOR TOASTING THE JUDGES.

Sir Peter Laurie, the saddler, when Lord Mayor of London, gave a dinner at the Mansion House to the

judges, and in proposing their health, observed in impassioned accents: "What a country is this we live in! In other parts of the world there is no chance, except for men of high birth and aristocratic connexions; but here genius and industry are sure to be rewarded. See before you the examples of myself, the Chief Magistrate of the metropolis of this great empire, and the Chief Justice of England sitting at my right hand (Lord Tenterden), both now in the highest offices in the state, and both sprung from the very dregs of the people!"

PARSIMONIOUS JUDGES.

Jekyll told a story about some one noticing an inaccuracy in the inscription on Lord Kenyon's tomb, "*mors janua vita*," the *a* being put instead of the diphthong *æ*. Lord Ellenborough thereon remarked, "Don't you know that that was by Kenyon's express desire, as he left it in his will that they should not go to the expense of a diphthong?" Jekyll said that Kenyon died of eating apple pie crust at breakfast, to save the expense of muffins, and that Lord Ellenborough, who succeeded to the Chief Justiceship in consequence, always bowed with great reverence to apple pie: "which," said Jekyll, "we used to call applepiety."

The Princesses also told how the King used to play tricks on Kenyon, sending the despatch box to him at a quarter past seven, when he knew Kenyon was snug in bed; being accustomed to go to bed at that hour to save candle light.

THE JUDGE'S KITCHEN.

Lord Kenyon, the Chief Justice, being noted for his parsimony, one day, speaking of the expenses of house-keeping, said he had lately been obliged to pay for a new spit. "Oh! my lord," said Jekyll, "nothing *turns* upon that."

A MAN WHOSE LIVING COST NOTHING.

Jekyll, Master in Chancery, told a story about cheap living and a man who once told him his eating cost him

almost nothing, for, "On Sunday," said he, "I always dine with my old friend, and then eat so much that it lasts till Wednesday, when I buy some tripe, which I hate like the very devil, and which makes me so sick that I cannot eat any more till Sunday again."

THE JUDGMENT OF SANCHE PANZA, CHIEF JUSTICE OF BARATARIA.

In "Don Quixote" we have the following masterly decision on an exceedingly difficult point of law: "My lord," said a stranger to Sancho Panza, after his first breakfast in Baratania, "a large river divides in two parts a certain manor. I beg your honour to lend me your attention, for it is a case of great importance and some difficulty. Upon this river there is a bridge, at the one end of which stands a gallows and a kind of court of justice, where four judges used to sit for the enforcement of a certain law made by the lord of the manor, as follows: 'Whosoever intends to pass from one end of this bridge to the other must first, upon his oath, declare whither he goes, and what his business is. If he swear truth he may go on; but if he swear false, he shall be hanged and die without fail upon the gibbet at the end of the bridge.' After the promulgation of this law many people, notwithstanding its severity, ventured to cross the bridge; and as the judges were satisfied that they swore the truth, they allowed such people to pass unmolested. At last, a passenger being sworn, declares that he has come to die upon that gallows, and this is his only business. This point put the judges to a nonplus; for, said they, if we let this man pass freely, he is forsworn, and according to the letter of the law he ought to die: if we hang him, he has sworn truth, seeing he swore that he was to die on that gibbet, and then by the same law we should let him pass." *Panza, C. J.* (after argument). "Come hither, honest man; either I am a very dunce, or there is as much reason to put this passenger to death as there is to let him live and pass the bridge; for if the truth save him, the lie equally condemns him. And this being so, as it really is, I am of opinion that you must tell the gentlemen who sent you hither that, since the reasons for condemning and acquit-

ting him are equal, they ought to let him pass freely, for it is always commendable to do good rather than harm. And this I would give under my hand if I could write. And in this decision I speak not of my own head, but upon the authority of a precept given me among many others by my master, Don Quixote, the night before I set out to be governor of this island, which was, that when justice happens to be in the least doubtful, I should lean and incline to the side of mercy. And God has been pleased to make me remember it in the present case, to which it applies so pat."

"It does so," answered the steward, "and for my part, I think Lycurgus himself, who gave laws to the Lacedemonians, could not have pronounced a better judgment than that now given by the great Panza. And let there be no more hearings this morning, and I will give orders that signor governor shall have the best of dinners to-day."

THE LAWYER AND THE PREACHER.

A celebrated Scotch preacher and pastor was visiting the house of a solicitor who was one of his flock, but had a reputation of indulging in sharp practice. The minister was surprised to meet there two other members of his flock, whose relations with the solicitor were not at the time known to be friendly or otherwise. In course of conversation the solicitor, alluding to some disputed point, appealed to the minister: "Doctor, these are members of your flock; may I ask whether you look on them as black or as white sheep?" "I don't know," answered the minister, "whether they are black or white sheep; but this I know, that if they are long here they are pretty sure to be *fleeced*."

THE LAWYER AND THE MILITARY OFFICER.

A military officer and a lawyer were talking of the disastrous battle of Auerstadt, and the former was lamenting over the number of brave soldiers who fell on that occasion. The lawyer observed that those who live by the sword must expect to die by the sword. The officer replied: "By a similar rule, those who live by the law must expect to die by the law!"

A LAWYER ONCE STRUCK IN THE FACE BY THE STREET.

Lord Rockville, a son of Lord Aberdeen, and a Scotch judge of last century, and who was said to be dignified and urbane, had been, before attaining his eminence, much addicted to drinking. On going late to one of his appointments, very much disfigured in the face and disreputable in appearance, he explained to the company how it happened: "Gentlemen," said he, "I have just met with one of the most extraordinary adventures. As I was walking along the Grassmarket, all of a sudden *the street* rose up and struck me on the face." This account entirely satisfied everybody.

Another still more eminent judge, Lord Keeper Guildford, when a young barrister, riding circuit, had one day taken so much wine, that he became quite drunk, and his sprightly horse carried him off into the middle of a deep pond. If he had not been rescued by Mr. Card, an attorney of Gray's Inn, "he had been lost; for which service his lordship ever had a value for Mr. Card." The eminent counsel was taken to a public house and put to bed, and his brother Roger says: "I remember when his lordship told this story of himself, he said the image he had when his horse first trotted, and so faster and faster, was as if his head knocked against a large sheet of lead as a ceiling over him; and after that he remembered nothing at all of what happened till he awoke."

A LEARNED COUNSEL PRESSED TO SING.

Lord Kellie, a man of convivial powers, was in company with Mr. Balfour, a Scotch advocate of humour, but very formal in his manners, and abstemious, and pressed the latter to sing a song, or tell a story, or drink a bumper; one or other he must do, and there would be no escape. The counsel then told this story in a pompous style: "One day, a thief, in the course of his rounds, saw the door of a church invitingly open, and he walked in, thinking to secure something useful. Having secured the pulpit cloth, he was retreating, when lo! he found

the door shut. After some consideration, he adopted the only means of escape left, namely, to let himself down by the bell rope. The bell of course rang, the people were alarmed, and the thief was taken just as he reached the ground. When they were dragging him away, he looked up, and significantly addressed the bell as I *now address your lordship* : ' Had it not been for your long tongue, and your empty head, I should have made my escape.' "

THE JUDGES' FISHMONGER.

When Lord Loughborough was Chief Justice of the Common Pleas, and Lord Kenyon Chief Justice of the King's Bench, a fishmonger near Lincoln's Inn Fields supplied both their tables with fish, and it was his custom to set out the different articles in lots, and ticket the name of the purchaser on each lot, and hang it up conspicuously in his shop. One day there were two tickets as follows: " Lord Loughborough, two turbot, six hen lobsters, four dozen smelts, one hundred prawns." " Lord Kenyon, one haddock." A gentleman passing, observed to the fishmonger on the difference between the two orders of his friends, the Chief Justices. The fishmonger replied: " Yes, there is a difference; but it would puzzle the best lawyer among you to tell me which will prove the best customer."

THE JUDGE AND THE SHEPHERD.

Lord Cockburn, the Scotch judge, was sitting on the hill-side on his estate of Bonally, near Edinburgh, talking to his shepherd, and speculating about the reasons why his sheep lay on what seemed to be the least sheltered or coldest situation on the hill. Said his lordship: " John, if I were a sheep I would lie on the other side of the hill." The shepherd answered, " Aye, my lord, but if ye had been a sheep ye would have had mair sense."

A CHANCELLOR'S OWL-LIKE WISDOM.

Lord Chancellor Thurlow's face was so remarkable for the appearance of wisdom, that the Duke of Norfolk

called one of his owls at Arundel Castle by the name of Lord Thurlow, from its imaginary likeness to his lordship. One morning the Duke was closeted with his solicitor, and in deep consultation about electioneering business, when the old owl-keeper knocked at the library door, and said: "My lord, I have great news to tell your grace." "Well," said the Duke, "what is it?" "Why, my lord," said the man, "Lord Thurlow has laid an egg this morning." The Duke, at the moment, had forgot all about the owl and its nickname, and was amazed; but, on being reminded of the real facts, felt that he owed an apology to the solicitor, whose profession was grossly scandalized by such familiarities with the source of all wisdom.

A LORD CHANCELLOR AND THE RING-DROPPERS.

Lord Chancellor Northington, on a rainy afternoon, was walking along Parliament Street, when he picked up a handsome ring, which was immediately claimed by a gentleman, who said he had dropped it, and on receiving his lost treasure, was so joyful and grateful that he insisted on the unknown finder accompanying him to an adjoining coffee-house to crack a bottle at his expense. The Chancellor, not disinclined to humour the stranger, followed him, and they drank together and talked on indifferent topics. Soon they were joined by the usual confederates, who proposed a game of hazard. The Chancellor overheard one say to the other: "D— the dice, he is not worth the trouble; *pick the old flat's pocket* at once." The Chancellor thought it time to discover himself, and told them, after doing so, that he would overlook their attempts if they would frankly confess what it was that induced them to suppose he was such a flat. Instantly, with all respect, one of them replied: "We beg your lordship's pardon, but whenever we see a gentleman in white stockings on a dirty day we consider him a capital pigeon, and pluck his feathers, as we hoped to do your lordship's."

A JUDGE WHO VISITED ALL THE GREAT FIRES.

Erskine had a most singular propensity for witnessing fires, and has been known to leave the House of Commons

in the midst of a debate, on hearing that a conflagration was to be seen within a mile. Sheridan said that a chimney could not smoke in the Borough without Erskine's knowledge.

A CHANCELLOR'S ATTEMPT AT POETRY.

Lord Eldon once exposed one of his many weaknesses by keeping the following imbecile composition of his own from being thrown into the fire :

“ Can it, my lovely Bessy, be
That when near forty years are past,
I still my lovely Bessy see
Dearer and dearer at the last ?

“ Nor time, nor years, nor age, nor care,
Believe me, lovely Bessy, will—
Much as his frame they daily wear—
Affect the heart that's Bessy's still.

“ In Scotland's climes I gave it thee,
In Scotland's climes I thine obtained;
Oh! to each other let them be
True, till an Heaven we've gained.”

Eldon.

LORD CHANCELLOR ERSKINE'S LOVE OF ANIMALS.

Romilly related a visit to Lord Erskine, after he resigned the great seal. “ Lord Erskine has always expressed and felt a great sympathy with animals. He has talked for years of a Bill he was to bring into Parliament, to prevent cruelty towards them. He has always had several favourite animals to which he has been much attached, and of which all his acquaintances have a number of anecdotes to relate: a favourite dog which he used to bring, when he was at the bar, to all his consultations; another favourite dog which, at the time when he was Lord Chancellor, he himself rescued in the street from some boys who were about to kill it under pretence of its being mad; a favourite goose, which followed him wherever he walked about his grounds; a favourite mackaw; and other dumb favourites without number. He told us now that he had got two favourite leeches.

He had been blooded by them last autumn, when he had been taken dangerously ill at Portsmouth; they had saved his life, and he brought them with him to town, had ever since kept them in a glass, had himself every day given them fresh water, and had formed a friendship with them. He said he was sure they both knew him, and were grateful to him. He called them Home and Clive, after the two celebrated surgeons. It is impossible, however, without the vivacity, the tones, the details, and the gestures of Lord Erskine, to give an adequate idea of this singular scene."—Romilly's Life.

THE JUDGE AND HIS DOG AT CHURCH.

Lord Hermand, the Scotch judge, had a large Newfoundland dog called Dolphin, which used to go everywhere with him, and even to church on Sundays. His master taught him to place his huge paws on the book-board, and rest his head gravely thereon like a country farmer. The dog seemed to relish this part of his duty, and when the judge could not attend, went itself to church and devoutly listened. And when there was no service in the parish church, the dog was even liberal enough to attend the dissenters' meeting-house with apparently equal relish and spiritual refreshment.

A GREAT JUDGE WHO WOULD SEE ALL THE SIGHTS.

One of Lord Stowell's weak points was a morbid craving to see all the exhibitions in the town. One day in Holborn, he entered, eager to see "the green monster serpent," which the public had been invited to visit there. As he pulled out his purse to pay for admission, a sharp but far too honest country lad who took the money, recognizing his old customer, and addressing him by name, said: "We can't take your shilling, my lord; 'tis 't old serpent which you have seen six times before in other colours, but ye shall go in and have a peep for nothing." He then at once entered, intensely delighted at this unlooked-for exemption from toll, and feasted his eyes on the painted snake for the seventh time.

LORD CHANCELLOR'S GARDENER.

The garden of Lord Erskine was under the care of a Scotch gardener, who once coming to complain to him, as of a grievance to be remedied, that the drought burnt up all the vegetables. and was killing the shrubs, he said to John: "Well, John, all that I can do for you is to order the hay to be cut down to-morrow morning; and if that does not bring rain, nothing will."

He encouraged the jokes of others, when even a little at his expense. Boasting of his fine flock of Southdowns, he joined in the laugh when Colman exclaimed, "I perceive your lordship has still an eye to the woolsack."

A CHANCELLOR HAWKING BROOMS.

Lord Erskine parted with his property at Hampstead, and bought an estate in Sussex, which turned out an unfortunate speculation, for it produced nothing but stunted birch trees, and was found irreclaimable. To lessen his loss, he set up a manufactory of brooms. One of the men he employed to sell them about the country, being taken before a magistrate for doing so without a license, contrary to the "Hawkers' and Pedlars' Act," he went in person to defend him, and contended there was a clause to meet this very case. Being asked which it was, he answered, "The *sweeping* clause, your worship, which is further fortified by a proviso that 'nothing herein contained shall prevent or be construed to prevent any proprietor of land from vending the produce thereof in any manner that to him shall seem fit.'"

COUNSEL'S THREADBARE COAT.

Harry Erskine, being told by a friend that his coat was much too short, answered, "It will be long enough before I get another."

JUDGE MAKING HIMSELF AFFABLE TO COUNSEL.

Lord Redesdale, from the English bar, having been appointed to the office of Lord Chancellor of Ireland, and having heard that the Irish barristers were witty,

was resolved to be very polite and complimentary. At one of his dinner parties, he thus welcomed Mr. Garrett O'Ferrall, a genuine specimen of the sons of the soil: "Mr. Garrett O'Ferrall," said the Chancellor, "I believe you are from the county of Wicklow, where your family have long held considerable property, and are very numerous. I think I was introduced to several during my late tour in that county." "Yes, my lord," replied O'Ferrall, "we *were very numerous*, but so many of us have been lately hanged for sheep-stealing, that the name is getting rather scarce in that county."—2 O'Flanagan's Irish Chanc., 294.

A JUDGE ON SERJEANTS.

One of the serjeants coming in too late for dinner, at Serjeant's Inn, found no place left for him. While he was waiting for a seat, the Chief Justice Tindal called out to him, "What's the matter, brother? you look like an outstanding term that's *unsatisfied*."

A serjeant was talked of one day as being a *sound* lawyer. Tindal remarked, "Well, that gives rise to a doubtful point, whether *roaring* is unsoundness."

At the assizes at Buckingham, a leader in one court was addressing a jury, and spoke so loudly, that the Chief Justice, when delivering his charge to the jury, enquired what the noise was. On being informed that Serjeant B. was opening a case in the next court, "Very well," said the judge, "since Brother B. is *opening*, I must shut up," and directed the doors between the two courts to be closed.

LIVING ON SEALS.

When pinched by returning poverty, in his old days, Lord Erskine would occasionally think with regret of the very short period he had enjoyed his lucrative office of Lord Chancellor. Captain Parry, the famous navigator, being asked at a dinner-party what he and his crew had lived upon when they were frozen up in the Polar Sea, said, "they *lived upon seals*." "And very good living too," exclaimed Erskine, "if you keep them long enough."

COUNSEL SUBSCRIBING TO A TESTIMONIAL.

The late worthy Sir John Sinclair, having proposed that a testimonial should be presented to himself by the British nation, for his eminent public services, in answer to one of his circulars, Erskine wrote on the first page of a letter in a flowing hand these words, which filled it to the bottom:—

MY DEAR SIR JOHN,

I am certain there are few in this kingdom who set a higher value on your public services than myself, and I have the honour to subscribe—

Then on turning over the leaf was to be found—

Myself,
Your most obedient faithful servant,
T. ERSKINE.

LORD CAMDEN'S FRIENDSHIP FOR GARRICK, THE ACTOR.

We learn from the inimitable Boswell, that Lord Camden was on a footing of great familiarity with Garrick, whose "death eclipsed the gaiety of nations." "I told him," says this prince of biographers, "that one morning when I went to breakfast with Garrick, who was very vain of his intimacy with Lord Camden, he accosted me thus: 'Pray now, did you—did you meet a little lawyer, turning the corner, eh?' 'No, sir,' said I. 'Pray, what do you mean by the question?' 'Why,' replied Garrick, with an affected indifference, yet as standing on tiptoe, 'Lord Camden has this moment left me. We have had a long walk together.' *Johnson*. "Well, sir, Garrick talked very properly: Lord Camden was a *little lawyer* to be associating so familiarly with a player.'" But, in another mood, Johnson would have highly and deservedly praised the *little lawyer* for relishing the society of a man who was a most agreeable companion, and of high intellectual accomplishments, as well as the greatest actor who ever trod the English stage.—
5 Camp. Chanc., 354.

A JUDGE ENGAGING A SERVANT.

Lord Braxfield, a strong but coarse Scotch judge at the beginning of the nineteenth century, when a butler gave up his place because his lordship's wife was always scolding him, "Lord," he exclaimed, "you've little to complain of; ye may be thankful ye're no married to her."

On another occasion Lord Braxfield once said to an eloquent culprit at the bar, "Ye're a vera clever chiel, man, but ye wad be nane the waur o' a hanging."—Lockhart's Life of Scott, chap. 48.

A JURY INSTRUCTED BY A JUDGE.

Mr. Horner (the father of Francis Horner, M. P.), who was one of the jurors in Muir's case, told Lord Cockburn that when he was passing, as was often done then, behind the bench to get into the jurors' box, Lord Braxfield, who knew him, whispered, "Come awa, Maister Horner, come awa, and help us to hang ane o' thae damned scoundrels."—Cockburn's Mem.

LORD ELLENBOROUGH'S ATTENTION IN PARLIAMENT.

Lord Ellenborough, in the House of Lords, when Lord —— yawned during his own speech, said to a brother peer, "Come, come, the fellow *does show* some symptoms of taste; but this is encroaching on your province."

Lord Ellenborough was once met going out of the House of Lords while Lord —— was speaking. Said his friend, "What, are *you* going?" "Why, yes," said Lord E., "I am accountable to God Almighty for the use of my time."

JUDGE A BAD SHOT.

Lord Eldon was a very bad shot, and as he went out alone, he often boasted of the heavy bags he brought home. Indeed, he was called by the nickname of "Old Bags." Lord Stowell, his brother, having great doubts about the authenticity of the contents of these bags, used to say that "My brother takes his game, I guess, not by *descent* but by *purchase*."

PUTTING THE HOUNDS IN CRAPE.

When Lady Rolle refused to allow her hounds to go out to the hunt on the death of her husband, a learned serjeant suggested whether there would be any harm in them being allowed, if a piece of crape were hung round their necks. "I hardly think," observed Chief Justice Tindal, "that crape can be necessary, for they will be at once in *full cry*."

THE LAWYER AND THE PHYSICIAN.

Lord Stowell, meeting the physician, Sir Henry Halford, asked a question as to the management of his own health. Sir Henry, knowing his man, and that the question would not carry a fee, made, with *malice prepense*, an evasive answer: "Well, you know, a man's health is generally in his own keeping. You remember the old saying that, at forty, every man is either a fool or a physician." Lord Stowell replied, "May he not be both, Sir Henry?" The physician had his revenge, for some one mentioning to him that the *bon vivant* peer was "complaining of his bowels," he drily answered, "Then he is the most ungrateful man on earth!"

Counsellor Cripps was one of a party at Castle Morton, where another of the party, a physician, had strolled out before dinner into the churchyard. When dinner began and he did not appear, to the surprise of the guests, the counsellor said, "Oh, never mind, he has just stepped out to pay a visit to some of his *old patients*."

THE OLD LAWYER'S YOUNG WIFE.

Sir William Scott, afterwards Lord Stowell, in 1813, being sixty-eight years old, married the Marchioness of Sligo, then forty-six years of age. She was liberal and he was grasping and parsimonious. He went from Doctors Commons to live in her house at Grafton Street, Bond Street, and, with an eye to economy, took his own door plate and had it fixed under Lady Sligo's. Jekyll, the barrister wit, happening to observe the position of the plates, condoled with Sir William on having thus to knock under. Sir William, not relishing this banter

ordered the plates to be transposed, and next time he met Jekyll, he triumphantly remarked, "You see I don't knock under now." "Not now," retorted Jekyll; "now you knock up."

Lady Sligo could not agree with her matrimonial judge, and generally went her own way, and while travelling with her niece in Germany, died, after a few days' illness, in 1817. Sir William was then travelling in Switzerland, and there he continued some weeks after he received the sad intelligence.

A YOUNG COUNSEL ENGAGING APARTMENTS.

Baldie Robertson, a Scotch advocate, asked Boswell to accompany him to cheapen a couple of rooms of Luckie Rannie's. She told him. "Sir, you shall just have them for a guinea a week, you furnishing coal and candle." Baldie, with much emotion, cried out, "But I tell you, woman, I have no coal and candle."

A COUNSEL WHO READ WITH EFFECT.

Robert Cullen, a Scotch advocate and famous mimic, and afterwards a judge, had a wretched manner of his own. One day he was reading Lord Mansfield's admirable speech on the Privilege Bill to his brother advocates. One of the advocates said, with a laugh, "To hear Cullen read Lord Mansfield's speech, was like hearing a piece of Handel's music played on a Jew's harp."

THE CURATE'S EYES WHILE PREACHING.

Lord Justice Knight Bruce often, during a heavy argument, sent down notes to one or other of the counsel, containing jokes or satires on the case, or on something said by the other counsel. On one occasion a case involved some allusion to the effect of the preacher's eyes on ladies attending church. The judge said one of the registrars of the court had translated a French epigram as follows for him on this subject, and it was very good:—

"The curate's eyes our ladies praise!
I never see their light divine;
He always *shuts them* when he prays,
And when he *preaches*, closes mine."

A RETIRED JUDGE BELIEVING HE WAS DEAD.

Sir John Blencowe, who retired from the Queen's Bench in 1722, at the age of eighty, outlived his faculties, and thought he had discovered the longitude. On one occasion he insisted that he was dead, and ordered his servant to lay him out. So, to indulge the whim, he was laid on the carpet. After a little the servant was satisfied that Sir John was coming to *life* again, and evidently Sir John thought the same thing, for he soon assented to being assisted to get up.

While he was old himself, the judge could also relish old age in others. His wife suggested that they should pension off an old stone breaker on the estate, as he was so old that he only spoiled the work and did no good. But the worthy judge replied: "No, no, he enjoys a pleasure in thinking that he earns his bread at the age of fourscore and ten; but if you turn him off, he will die of grief."

AN OLD JUDGE CONTRIVING TO BE SHOT.

An old judge is said to have evaded the law as to *felo de se* in this way. Several of Chief Justice Hankford's deer having been stolen, he gave strict orders to his keeper to shoot any person met with, in or near the park, at night, who would not stand when challenged. He then, in a dark night, threw himself in the keeper's way, and, refusing to stand when challenged, was shot dead upon the spot. "This story" (says Prince, the author of "Worthies of Devon") "is authenticated by several writers, and the constant traditions of the neighbourhood: and I myself have been shown the rotten stump of an old oak under which he is said to have fallen, and it is called Hankford's Oak to this day."

THURLOW'S SALLIES.

Erskine used to tell the story that Thurlow once said to George IV., when Prince of Wales, "Sir, your father will continue to be a popular king, as long as he continues to go to church every Sunday, and to be faithful to that ugly woman, your mother; but you, sir, will never be popular."

When Thurlow was in his last illness, and his servants were carrying him upstairs to his bedroom, they happened to let his legs strike against the banisters, upon which he uttered the last words he ever spoke—a frightful imprecation on “all their souls.”

Dunning was an ugly man, and one night, as he was playing at whist at Nando’s coffeehouse, with Horne Tooke and others, Thurlow called at the door, and desired the waiter to give a note to Dunning. The waiter said he did not know any one of that name, whereupon Thurlow said, “Take the note upstairs, and give it to the ugliest man you see in the room. If there’s any one with a face like the knave of clubs, that’s the man, and give it to him.” The eminent counsel was discovered at once by this description, and received the note.

JUDGES WEARING THEIR WIGS IN SOCIETY.

In the midst of all the distinction showered on Lord Eldon, one object for which he struggled he could not yet obtain. To please Lady Eldon, who had a just horror of the wigs with which judges were then disfigured in society, he prayed the King that when he was not sitting in court he might be allowed to appear with his own hair, observing, that so lately as the reigns of James I. and Charles I., judicial wigs were unknown. “True,” replied the king. “I admit the correctness of your statement, and am willing, if you like it, that you should do as they did; for, though they certainly had no wigs, yet they wore long beards.”

THE POPE AND THE PRETENDER.

The Irish counsellor, Norcutt, a portly-looking, swaggering, smirking person, who affected wit, was talking with Keller, who insinuated that Norcutt was favourable to Catholic emancipation—a question of the day. “What!” said Norcutt, in a pompous way, “What! Pray, Keller, do you see anything that smacks of the ‘Pope’ about me?” “I don’t know,” said Keller; “but, at all events, there is a great deal of the ‘pretender,’ and I always understood them to go together.”

HALF AN HOUR TO SEE A JOKE.

Lord Balmuto, a Judge of the Court of Session, was a very slow and dull man, and Henry Erskine, the leader of the bar, was full of wit. His lordship relished the wit, but he was very long in discovering and appreciating the point made. After a witticism had been delivered, and the judge had walked a mile or two with Mr. Erskine, the point penetrated at last the interior of the judicial mind. Then his lordship, as if inspired, exclaimed: "I have you now, Harry! I have you now, Harry!" stopping and breaking into an immoderate fit of laughter, which, if it had only been half an hour earlier, would have been very welcome to his fellow traveller.

A SERJEANT LAMPOONED BY SWIFT.

Swift, having a grudge at the Irish counsel, Serjeant Bettesworth, wrote these lines of him:—

" So at the bar the booby Bettesworth,
Though half-a-crown o'er pays his sweat's worth,
Who knows in law nor text nor margent,
Calls Singleton his brother serjeant."

The serjeant went in a rage to the dean's house, and announced himself, "Sir, I am Serjeant Bettesworth!" "Of what regiment pray, sir?" said the dean. "Oh, Mr. Dean, we know your powers of raillery. I am come to demand if you are the author of this poem, and these villainous lines on me." Swift replied, quoting the advice of Lord Somers, "never to own or disown any writing laid to his charge." After some talk, the serjeant quitted the room, saying, "Since you will give me no satisfaction in this affair, let me tell you your gown is your protection, under the sanction of which, like one of your own Yahoos, who had climbed up to the top of a high tree, you sit secure, and squirt your filth on all mankind!" Swift, when relating this, said that the fellow showed more wit than he thought he had possessed.

A JUDGE ON PAROCHIAL FEASTS.

Lord Stowell was of a lively temperament, and extremely fond of society and its good living. He acknowl-

edged to Mr. Croker that he was very convivial, and readily confessed his partiality to a bottle of port. One day, when some one objected to the practice of having dinners for parish or public purposes, "Sir," said Lord Stowell, "I approve of the dining system; it puts people in a good humour, and makes them agree when they otherwise might not. A dinner *lubricates business*."

LAWYERS IN FULL BUSINESS AND THEIR NOVEL READING.

Wilberforce said that one of the most remarkable things about Sir S. Romilly was, though he had such an immense quantity of business, he seemed always an idle man. If you had not known who or what he was, you would have said, "He is a remarkably gentleman-like, pleasant man; I suppose, poor fellow, he has no business;" for he would stand at the bar of the house and chat with you, and talk over the last novel, with which he was as well acquainted as if he had nothing else to think about. Once, indeed, I remember coming to speak to him in court, and seeing him look fagged, and with an immense pile of papers by him. This was at a time when Lord Eldon had been reproached for having left business undischarged, and had declared that he would get through all arrears by sitting until the business was done. As I went up to Romilly, Lord Eldon saw me and beckoned to me with as much cheerfulness and gaiety as possible. When I was alone with Romilly, and asked him how he was, he answered: "I am worn to death; here we have been sitting on in the vacation from nine in the morning until four, and when we leave this place, I have to read through all my papers, to be ready for tomorrow morning; but the most extraordinary part of all is, that Eldon, who has not only mine, but all the other business to go through, is just as cheerful and untired as ever."—2 Law and Lawyers, 204.

CHANCERY LAWYER READING NOVELS.

Lord Eldon once astonished the bar by saying that, during the Long Vacation, he had read "Paradise Lost;" but it was shrewdly suspected he had only skimmed it

over; trying to find out "the charging part." He did as John Bell, the famous Chancery pleader, did, who, having said that he had read all the new novels, and being asked how he found time, answered, "I soon find out the *charging part*," that is, the part wherein lies the virtue of a Bill in Chancery.

THEATRES AND THE "GODS."

O'Connell told Moore of a curious judgment he once heard Curran deliver, as Master of the Rolls, in a case connected with the theatre, about free admissions, which the renters wished to restrain. In the judgment he drew an illustration from Lundy Foot, and said that, "This tobacconist might as well bring an action for damages against a man who, in passing by his shop, caught an *eleemosynary pinch of snuff on the breeze*." He then proceeded to say that the case reminded him of his youthful days, when he used to frequent the "gods," and there noticed that the gratuitous part of the audience were the most clamorous and applausive, and accordingly came to the conclusion that if free admissions were not allowed, not only would the theatre be proportionally thinner, but, what would be a serious grievance, *bad acting would go without applause*."

CENSORSHIP OF PLAYS.

All trace of censorship as to books was wholly obliterated in 1691, when the Licensing Act finally expired; but the old spirit soon revived, and it was thought by the wisdom of Parliament unsafe to leave authors and actors to their own devices, it being apparently assumed that the usual remedy of an indictment or criminal information was not adequate to deter offenders in this class of publications, though long since confessed to be so as to all others.

By the Act of 1843 every person who shall cause to be acted, or for hire shall act, any new stage-play, or any act, scene, or part of one, until the same shall have been allowed by the Lord Chamberlain, or after it has been disallowed, shall forfeit a sum of £50, and the license

for such theatre shall become absolutely void. A stage-play includes nearly every kind of entertainment of the stage, including opera and pantomime. And though mere tumbling is not an operatic performance, yet where there is little else than dancing and pantomime it will be a question of fact whether it amounts to this description. And a dialogue between two persons in costumes and characters satisfies the description of entertainment of the stage. But the Lord Chamberlain's allowance was carefully stated to be unnecessary for such theatrical representations as are given in booths or shows allowed by justices at fairs and feasts.

RIGHT OF HISSING AT THEATRES.

It has been sometimes thought that as theatres are intended for the resort and recreation of the public, there are peculiar privileges if not absolute rights on the part of the public, and that the proprietor of the theatre is much at their mercy, and cannot refuse to admit any person who chooses to enter on paying the appropriate price. But this 'is founded on confusion of ideas. A theatre differs in no respect from a shop, or a building where a public meeting is held, or where the public are invited for a particular purpose, and it has been seen how far the exclusion of the public can be carried by the proprietor for the time being of any such place of meeting. The proprietor can at all times request a person who has paid for admission to leave the building, whether he has misconducted himself or not, and the person so requested has no alternative but to leave, and may bring an action for breach of contract and for repayment of his money, but has no other remedy. The imprudence of so excluding a peaceable person is obvious; but the law is bound to regard only the strict rights of the respective parties to the contract, and a guest cannot argue with the master of the building about remaining, when his presence is objected to.

On this subject Sir J. Mansfield said once, "I cannot tell upon what grounds many people conceive they have a right at a theatre to make such prodigious noises as to prevent others from hearing what is going forward on the

stage. Theatres are not absolute necessities of life, and any person may stay away who does not approve of the manner in which they are managed. If the prices of admission are unreasonable, the evil will cure itself; people will not go, and the proprietors will be ruined unless they lower their demands. But the proprietors of theatres have a right to manage their property in their own way, and to fix what prices of admission they think most for their own advantage."—Paterson's Lib. Press, 311.

THEATRE *VERSUS* CIRCUS.

Curran was counsel in a case where the proprietors of the Theatre Royal, Dublin, sued Astley, the circus proprietor, for acting the "Lock and Key." "My lords," said Curran, "the whole question turns upon this, whether the said 'Lock and Key' is to be a *patent* one, or of the *spring and tumbler* kind!"

THE ACTOR AND THE EMINENT LAWYERS IN A STAGE COACH.

Charles Mathews, the first, was travelling by the stage coach from the north, one very cold wintry night, during the reign of George IV., when he had two unknown fellow passengers, one of whom had thrown a large white linen wrapper round his head, and went to sleep. A fourth passenger, after parting with a boon companion, came in while they were nearly all asleep. He was damp with snow, and on sitting down called out, "Coompany, oop or down," as if asking whether he was to shut or leave open the door window. He was irritated at their not answering, and went on muttering repetitions of this unanswered question, and that the weather was dreadful, and other particulars, one after another, till one of the passengers broke out and begged him to hold his tongue, for he was a nuisance. He was still more irritated at this, exclaimed that "he was a respectable man, had paid his fare, and his name was John Luckie, and he had paid the King's taxes, etc. And he would not hold his tongue, no, not for Baron Hullock (a north country man), nor the great Mr. Bruffem (Brougham)." Mathews, being amused, told the man confidentially, that that was Baron Hullock in the corner asleep, and the one opposite, in white

head-gear, was Lady Hullock, and he himself was Mr. Bruffem. The effect of this announcement was electric. The man felt alarmed and wanted to go out at once. In his abortive efforts, Mathews imitated the squalling of a child, as if Lady Hullock had one under her arm, and the boor begged pardon for hurting the child; and Baron and Lady Hullock were adjured again and again, almost piteously, to forgive him. He was so uncomfortable that he took the first opportunity to escape quietly, being fearful of some appalling legal retribution that might overtake him and smite him to the ground, for taking such great names in vain.

MIMICKING A JUDGE ON THE STAGE.

Charles Mathews, the first, was so successful in imitating Mr. Curran, the Irish Master of the Rolls, that after the death of the latter, when giving his imitations in a friend's house, the widow, who was accidentally in another room, shrieked with horror at the well-remembered voice. The actor was also so successful in imitating Lord Ellenborough, in the character of charging the jury in the play of "Love, Law and Physic," that the audience roared and shouted their delight. The noise of this success reached the Prince of Wales (George IV.), who invited Mr. Mathews to Carlton House, where a circle of twenty persons were present. The Prince told Mr. Mathews he had heard of his excellent mimicry of Lord Ellenborough, and as he himself (the Prince) professed to do Lord Eldon, the Chancellor, pretty well, he begged a specimen of the Chief Justice, which was given accordingly with great applause. As, however, this was a dangerous success, Mr. Mathews prudently ceased to repeat this exhibition.

THE JUDGE COMPLIMENTING THE ACTOR.

In 1775, a conspiracy was entered into to drive Mr. Macklin from the stage, and the conspirators were indicted. The prosecution was very costly to Mr. Macklin, who however agreed, after the conviction of the defendants, that if his costs were paid, and tickets for certain benefit nights were taken to the value of £300, he would not press for further punishment. Lord Mansfield said

this was highly honourable; and added, that notwithstanding Mr. Macklin's acknowledged abilities as an actor, he never *acted* better in his life than he had done that day. The proposal was accepted, and the matter ended. Lord Mansfield observed as to the law, that the right of hissing and applauding in a theatre, was an unalterable right, but that there was a wide distinction between expressing the natural sensations of the mind, as they arose from what was seen and heard, and executing a preconcerted design, not only to hiss an actor when he was playing a part, but also to drive him from the theatre and promote his utter ruin.—Peake's Colman Family.

COMPLAINT OF PLAYS INCREASING THE NUMBER OF THIEVES.

In 1773, the following note was sent to Colman, manager of Covent Garden Theatre: "The magistrates now sitting at Bow Street, present their compliments to Mr. Colman, and acquaint him that, on the 'Beggar's Opera' being given out to be played some time ago at Drury Lane Theatre, they requested the managers not to exhibit this opera, deeming it productive of mischief to society, as, in their opinion, it most undoubtedly increased the number of thieves. Under these circumstances, from a sense of duty and the principles of humanity, the magistrates make the same request to Mr. Colman, and the rest of the managers of His Majesty's Theatre, Covent Garden."

Colman answered: "Mr. C. presents his best respects to the magistrates with whose note he has just been honoured. He has not yet had an opportunity of submitting it to the other managers, but for his own part, cannot help differing in opinion with the magistrates, thinking that the theatre is one of the very few houses in the neighbourhood that does not contribute to increase the number of thieves."

Mr. Peake, the biographer, says that, "In those *Jonathan Wild* days, Mr. Colman's reply to the magistrates was rather severe."

CHAPTER X.

ABOUT THE LORD CHANCELLOR AND THE GREAT SEAL.

GREAT SEAL, ORIGIN OF ITS USE AND OF THE OFFICE OF LORD CHANCELLOR.

Lord Campbell thus explained the origin of using a Great Seal. From the art of writing being little known, seals became common; and the King, according to the fashion of the age, adopted a seal with which writs and grants were sealed. This was called the Great Seal, and the custody of it was given to the Chancellor.

For ages to come the Chancellor had no separate judicial power, and was not considered of very high dignity in the State, and the office was chiefly courted as a stepping-stone to a bishopric, to which it almost invariably led. Particular individuals holding the Great Seal acquired a great ascendancy from their talents; but, among the Anglo-Saxons, the Chancellor was not generally a conspicuous member of the government, and in the early Anglo-Norman reigns he ranked only sixth of the great officers under the Crown, coming after the Chief Justiciar, the Constable, the Marischal, the Steward, and the Chamberlain. At this time the Chief Justiciar was by far the greatest subject, both in rank and power. He was generally taken from among the high hereditary barons; his functions were more political than judicial; he sometimes led armies to battle; and when the Sovereign was beyond the sea, by virtue of his office, as regent, he governed the realm.

GREAT SEAL AND OTHER SEALS.

In early times, the King used occasionally to deliver to the Chancellor several seals of different materials, as one

of gold, and one of silver, but with the same impression, to be used for the same purpose; and hence we still talk of the "seals being in commission," or of a particular individual "being a candidate for the seals," meaning the office of Lord Chancellor. Although, with the exception of the rival Great Seals used by the King and the Parliament during the Civil War, in the time of Charles I., there has not been for many centuries more than one Great Seal in existence at the same time, when, on a new reign, or on a change of the royal arms or style, an order is made by the Sovereign in Council for a new Great Seal, the old one is publicly broken, and the fragments become the fee of the Chancellor.

The close roll abounds with curious details of the careful manner in which this Great Seal was kept in its "white leathern bag and silken purse," under the private seal of the Chancellor. There was a rule that he should not take it out of the realm; and this was observed by all Chancellors except Cardinal Wolsey, who, in 1521, carried it with him into the Low Countries, and sealed writs with it at Calais; a supposed violation of duty, which formed one of the articles of his impeachment.—1 Camp. Chanc., 27.

THE GREAT SEAL, ITS MEANING AND PURPOSE.

Lord Campbell makes these observations respecting the Great Seal, and the mode of applying it. It is considered the emblem of sovereignty—the *clavis regni*—the only instrument by which, on solemn occasions, the will of the Sovereign can be expressed. Absolute faith is universally given to every document purporting to be under the Great Seal, as having been duly sealed with it by the authority of the Sovereign.

The law, therefore, takes anxious precautions to guard against any abuse of it. To counterfeit the Great Seal is high treason, and there are only certain modes in which the genuine Great Seal can be lawfully used.—1 Camp. Chanc., 23.

CHANCELLOR A TRAINED JUDGE.

Sir Robert Parnynge, who, in 1341, held the Great Seal, was the first regularly bred common lawyer who

was ever appointed to the office of Chancellor in England.

Lord Chancellor Shaftesbury, in the reign of Charles II., was the last Chancellor appointed who was not a trained lawyer.

WHEN CHANCELLOR REQUIRED TO BE A TRAINED JUDGE.

The business of the Court of Chancery had so much increased in 1558, that, to dispose of it satisfactorily, required a judge regularly trained to the profession of the law, and willing to devote to it all his energy and industry. The Statute of Wills, the Statute of Uses, the new modes of conveyancing introduced for avoiding transmutation of possession; the questions which arose respecting the property of the dissolved monasteries; and the great increase of commerce and wealth in the nation, brought such a number of important suits into the Court of Chancery, that the holder of the Great Seal could no longer satisfy the public by occasionally stealing a few hours from his political occupations, to dispose of bills and petitions, and not only was his daily attendance demanded in Westminster Hall during term time, but it was necessary that he should sit for a portion of each vacation, either at his own house, or in some convenient place appointed by him, for clearing off his arrears. So, a month after Lord Chancellor Heath's death, Queen Elizabeth found out a thorough business man.

On the 22nd of December, 1558, we are told that, "between the hours of ten and eleven in the forenoon, at the Queen's Royal Palace of Somerset House, in the Strand, the Queen, taking the Great Seal from its white leather bag and red velvet purse, before the Lord Treasurer and many others, delivered it to Sir Nicholas Bacon (father of Sir Francis Bacon), with the title of Lord Keeper, and all the powers belonging to a Lord Chancellor; and he, gratefully receiving it from her Majesty, having sealed with it a summons to the Convocation, returned it into its leathern bag and velvet purse, and carried it off with him, to be held during the good pleasure of her Majesty." —2 Camp. Chanc., 88.

THE LORD CHANCELLOR IN PARLIAMENT.

By a standing order of the House of Lords, the Lord Chancellor, when addressing their Lordships, is to be uncovered; but he is covered when he addresses others, including a deputation of the Commons.

When he appears in his official capacity in the presence of the Sovereign, or receives messengers of the House of Commons at the bar of the House of Lords, he bears in his hand the purse containing (or supposed to contain) the Great Seal. On other occasions it is carried by his purse-bearer, or lies before him as the emblem of his authority. When he goes before a committee of the House of Commons, he wears his robes, and is attended by his mace-bearer and purse-bearer. Being seated, he puts on his hat, to assert the dignity of the Upper House, and then, having uncovered, gives his evidence.—1 Camp. Chanc., 28.

LORD CHANCELLOR'S APPOINTMENT TO THE GREAT SEAL.

The appointment to the office of Lord Chancellor in very remote times was by patent or writ of Privy Seal, or by suspending the Great Seal by a chain round his neck; but for many ages the Sovereign has conferred the office by simply delivering the Great Seal to the person who is to hold it, verbally addressing him by the title which he is to bear. He then instantly takes the oaths, and is clothed with all the authority of the office, although usually, before entering upon the public exercise of it, he has been installed in it with great pomp and solemnity.—1 Camp. Chanc., 22.

LORD CHANCELLOR AS A PRIVY COUNCILLOR.

It is said by Selden, that the Lord Chancellor is a privy councillor by virtue of his office; but this can only mean that he is entitled to offer the King advice, as any peer may do; not that by the delivery of the Great Seal to him, he is incidentally constituted a member of the Privy Council, with the powers lawfully belonging to that office: for no one can sit in the Privy Council, who is not by the special command of the Sovereign appointed

a member of it; and, as far back as can be traced, the Lord Chancellors who were not privy councillors previous to their elevation, have been sworn of the Privy Council, like other great officers of state.—1 Camp. Chanc., 16.

LORD CHANCELLOR—HIS POWER AS A JUDGE.

The most celebrated saying about the judicial power of the Lord Chancellor is that of Selden: "Equity is a roguish thing: for law we have a measure. Equity is according to the conscience of him who is Chancellor, and as that is larger or narrower, so is equity. It is all one as if they should make the standard for the measure we call a foot, 'a Chancellor's foot.' What an uncertain measure would this be! One Chancellor has a long foot; another a short foot; a third, an indifferent foot. It is the same thing in the Chancellor's conscience."—Seld. Table Talk.

ST. SWITHIN AS LORD CHANCELLOR.

The legend of St. Swithin, once Lord Chancellor, about 862, was to this effect. It was thought that the body of the saint ought to be translated from the churchyard to be deposited under the high altar, and the 15th of July was fixed for that ceremony, when there were to be the most gorgeous processions ever seen in England. But he highly disapproved of this disregard of his dying injunction, and sent a tremendous rain, which continued without intermission for forty days, and owing to its lasting so long the project was abandoned. Ever since then he is considered to regulate the weather for forty days from the day of his proposed translation, laying down this rule, that as that day is fair or foul, it will be fair or foul for forty days thereafter.

The founders of the Reformation in England seem to have entertained a very grateful recollection of his services to the Church, for they have preserved the 15th of July as a saint's day, dedicated to Lord Chancellor Swithin. It must be admitted that there is great difficulty in distinguishing between what is authentic and what is fabulous in this history.—1 Camp. Chanc., 33.

SCHEME TO MAKE OFFICE OF LORD CHANCELLOR
ELECTIVE.

The Chancellor De Grenefield and Edward the First's other ministers were excessively unpopular, insomuch that at a Parliament called soon after his appointment, an attempt was made to carry a favourite scheme several times brought forward in weak reigns about this period of English history, but which we should not have expected to find proposed to him who had conquered Wales, and led his victorious armies to the extremity of Scotland, namely, that the Chancellor, Chief Justice, and Treasurer, should be chosen or appointed by the community of the kingdom. The King, by the Chancellor's advice, returned for answer, "I perceive you would at your pleasure make your King truckle to you, and bring him under subjection. Why have you not asked the Crown of me also? Whilst at the same time you look upon that as very fit and necessary for yourselves which you grudge me that am your King; for it is lawful for every one of you, as master of his own family, to take in or turn out what servants he pleases; but if I may not appoint my Chancellor, Chief Justice, and Treasurer, I will be no longer your King; yet if they or any other officers shall do you any wrong or injustice, and complaint be made of it to me, you shall then have some reason to grumble if you are not righted." This firmness had such an effect, that the Barons humbly begged the King's pardon for their presumption.—1 Camp. Chanc., 182.

A LADY HIGH CHANCELLOR OR LADY KEEPER.

In the summer of the year 1253, King Henry III., being about to lead an expedition into Gascony, to quell an insurrection in that province, appointed Queen Eleanor Lady Keeper of the Great Seal during his absence, with this declaration, "that if any thing which might turn to the detriment of the Crown or realm was sealed in the King's name, whilst he continued out of the realm, with any other seal, it should be utterly void." The Queen was to act with the advice of Richard, Earl of Cornwall, the King's brother, and others of his Council.

She accordingly held the office nearly a whole year, performing all its duties, as well judicial as ministerial. Lord Campbell thus felt bound to include her in the list of "Chancellors and Keepers of the Great Seal," whose lives he had undertaken to delineate.

The sealing of writs and common instruments was left, under the direction of Queen Eleanor, to Kilkenny, Archdeacon of Coventry, but the more important duties of the office she executed in person. She sat as judge in the Aula Regia, beginning her sittings on the morrow of the nativity of the blessed Virgin Mary.

These sittings were interrupted by the accouchement of the judge. The Lady Keeper had been left by her husband in a state of pregnancy, and on the 25th of November, 1253, she was delivered of a princess, to whom the Archbishop of Canterbury, her uncle, stood godfather, and who was baptized by the name of Catherine, being born on St. Catherine's day.

Her ladyship was afterwards treated with great rudeness by the London mob, who pelted her with dirt and rotten eggs, and cried "Drown the witch!" which frightened her, and drove her for refuge to the Tower. The King never forgave the Londoners for this conduct. She ultimately took the veil, and retired to a monastery, when her son, Edward I., became King; but she lived to see him at the height of his glory, in 1292.—1 Camp. Chanc., 141.—Foss's Judges.

CHANCELLOR WILLIAM OF WICKHAM.

That distinguished man, William of Wickham, who was twice Lord Chancellor, was born in the year 1324, at the village in Hampshire from which he took his name, of poor but honest parents, being the son of John Long and Sibyl, his wife. He probably would never have been known to the world had he not, when almost quite a child, attracted the notice of Nicholas Uvedale, Lord of the Manor of Wickham, and governor of Winchester, who put him to school in that city. He is likewise said to have been sent to study at Oxford; but there is great reason to doubt whether he ever was at any university, and his splendid foundations for the education of youth

probably proceeded less from gratitude than from a desire to rescue others from the disadvantages under which he had himself laboured, for he never possessed scholastic learning, and he owed his advancement to the native fervour of his genius, and the energy which enabled him to surmount all difficulties. While still a youth he became private secretary to his patron, and was lodged in a high turret in Winchester Castle, of which Uvedale was constable. Here he imbibed that enthusiastic admiration of Gothic architecture which was the foundation of his fortune. Ere long there was no cathedral, ancient church, baronial hall, or Norman castle, many miles round, that he had not visited and studied; and he set to work to consider scientifically how such stately structures were erected, and to figure in his imagination others grander and of finer proportions.

Wickham furnished the designs for the new Castle of Windsor such nearly as we now behold it; suitable to its noble position, and for simplicity and grandeur superior to any royal residence in the world. He showed corresponding vigour in carrying the plan into execution. By a stretch of prerogative, every county in England was obliged to send a contingent of masons and other workmen, and in a surprisingly short period the structure was completed. It is said that the architect gave deep offence to his royal master by placing on one of the gates the inscription "This made Wichem," which was construed into an arrogant appropriation to himself of all the glory of the edifice. But he insisted that the words were to be read as a translation of *Wichamum fecit hoc*, not of *Hoc fecit Wichamus*. That according to the usual idiom of the English language, "Wicham" was here the accusative case, instead of the nominative, and that he only wished posterity to know that his superintendence of the work had gained him the royal favour, and thus had raised him from low degree to exalted fortune. Edward was appeased, and ever afterwards delighted to honour him.

In 1371, when William of Wickham had been Chancellor four years, the Earls, Barons and Commons of England (the Lords spiritual, as might have been expected, not joining in the vote) petitioned the King,

"that thenceforth none but laymen should be appointed Chancellor, or other great officer or governor of the realm, for the state had been too long governed by churchmen *queux ne sont mye justiciables en touz cas.*"—I Camp. Chanc., 265.

CHANCELLOR WOLSEY'S LAST DAY IN COURT.

When Chancellor Wolsey found that he was finally cast off by his master, Henry VIII., who was now under the entire management of other favourites, and that he must soon bid adieu to all his greatness, for a time he lost all fortitude; "he wept like a woman and wailed like a child." On his return to London, however, his spirits rallied, and he resolved with decency to meet the impending blow. On the first day of Michaelmas term, which then began in the middle of October, he headed the usual grand procession to Westminster Hall, riding on his mule, attended by his crosses, his pillars and his poll-axes, and an immense retinue to defend the Great Seal and the cardinal's hat. It was remarked that in the procession, and while sitting in the Court of Chancery, his manner was dignified and collected, although he, and all who beheld him, knew that he had touched the highest point of all his greatness, and from the full meridian of his glory he hastened to his setting. This was his last appearance in public as Chancellor.

The same evening he received a private intimation that the King had openly announced his immediate disgrace. The next day he remained at home, hourly expecting the messenger of fate, but it passed on without any occurrence to terminate his suspense. The following day, however, came the Dukes of Norfolk and Suffolk from the King, "declaring to him how the King's pleasure was that he should surrender and deliver up the Great Seal into their hands." He demanded of them "what commission they had to give him any such commandment?" They answered, "they were the King's commissioners in that behalf, having orders by his mouth to do so." He denied that this was sufficient without further manifestation of the King's pleasure, and high words passed between them. The Dukes were obliged

to take their departure without accomplishing their object. But the next morning they brought from Windsor letters from the King, under the Privy Seal, demanding the surrender of the Great Seal; whereupon, expressing great reverence for the King's authority so exercised, he delivered it up to them inclosed in a box, of which he gave them the key. They at the same time signified to him his Majesty's pleasure, that he should surrender up York Place and all his possessions, and retire to his country house at Esher."—1 Camp. Chanc., 491.

CHANCELLOR AND LORD KEEPER CONCURRENTLY.

The assertion of former usage was correct in the statute 5 Eliz., c. 18, which gave to the Lord Keeper all the powers of Lord Chancellor, where there had been a Lord Keeper without a Lord Chancellor; but the framer of that statute was probably not aware of what we, from the examination of the records, now know, that in early ages there were frequently a Chancellor and Keeper of the Great Seal at the same time; when the latter could only act by the special directions of the former. There could not, after 5 Eliz., have been a Chancellor and Keeper at the same time, but all occasion for such an arrangement is now obviated by the multiplication of Vice-Chancellors.—2 Camp. Chanc., 94.

THE DANCING CHANCELLOR.

What was the astonishment of courtiers, of lawyers, and of citizens, when on Saturday, the 29th of April, 1587, it was announced that Queen Elizabeth had chosen for the keeper of her conscience, to preside in the Chancery, and the Star Chamber, and the House of Lords, and to superintend the administration of justice throughout the realm, a gay foppish cavalier never called to the bar, and chiefly famed for his handsome person, his taste in dress, and skill in dancing—Sir Christopher Hatton! In the long reign of Elizabeth, no domestic occurrence seemed so strange as this appointment; but, with the exception of her choice of Burghley for her minister, she was much influenced in the selection of persons for high

employment by personal favour. But while he spent much of his time in dicing and gallantry, there were two amusements to which he particularly devoted himself, and which laid the foundation of his future fortune. The first was dancing, which he studied under the best masters; and in which he excelled beyond any man of his time. The other was the stage; he constantly frequented the theatres, which, although Shakespeare was still a boy at Stratford-on-Avon, were beginning to flourish; and he himself used to assist in writing masques, and took a part in performing them. He was one of five students of the Inner Temple who wrote a play entitled, "Tancred and Gismund," which, in the year 1568, was acted by that society before the Queen. When he became a great man, his flatterers pretended that he never meant to make the law a profession, and that he was sent to an Inn of Court merely to finish his education in the mixed society of young men of business and pleasure there to be met with; but there can be no doubt that, as a younger brother of a poor family, it was intended that he should earn his bread by "a knowledge of good pleading in actions real and personal;" and the news of the manner in which he dedicated himself to dancing, which made his fortune, must have caused heavy hearts under the paternal roof in Northamptonshire. Some of the courtiers at first thought that this ceremony was a piece of wicked pleasantry on the part of the Queen; but when it was seen that she was serious, all joined in congratulating the new Lord Chancellor, and expressed satisfaction that her Majesty had been emancipated from the prejudice that a musty old lawyer only was fit to preside in the Chancery; whereas that Court, being governed not by the strict rules of law, but by natural equity, justice would be much better administered there by a gentleman of plain good sense and knowledge of the world. Meetings of the bar were held, and it was resolved by many serjeants and apprentices that they would not plead before the new Chancellor; but a few who looked eagerly for advancement, dissented. The Chancellor himself was determined to brave the storm, and Elizabeth and all her ministers expressed a determination to stand by him. He was

exceedingly cautious, not venturing to wade beyond the shallow margin of equity, where he could distinctly see the bottom. He always took time to consider in cases of any difficulty; and in these he was guided by the advice of one Sir Richard Swale, described as his "servant-friend," who was a Doctor of the Civil Law, and a clerk in the Chancery, and well skilled in all the practice and doctrines of the Court.

All contemporary accounts agree that the Queen's neglect and cruelty had such an effect upon his spirits, that he died of a broken heart. In Trinity term, 1591, it was publicly observed he had lost his gaiety and good looks. He did not rally during the long vacation, and when Michaelmas term came round, he was confined to his bed. His sad condition being related to Elizabeth, all her former fondness for him revived, and she herself hurried to his house in Ely Place with cordial broths, in the hope of restoring him. These she warmed and offered him with her own hand, while he lay in bed, adding many soothing expressions, and bidding him live for her sake. "But," he said, "all will not do: no pullies will draw up a heart once cast down, though a Queen herself should set her hand thereunto." He died in the evening of Friday, the 21st of November, in the fifty-fourth year of his age. —2 Camp. Chanc., 155.

OFFER OF CHANCELLORSHIP ON CONDITION OF CHANGING RELIGION.

A letter is preserved at Plowden Hall, written by Queen Elizabeth to Serjeant Plowden, containing an offer to make him Lord Chancellor, if he would consent to change his religion. The Queen's Protestant tendencies were then undeniable, and she wanted to secure the best lawyers of the day. The answer of the Serjeant was as follows: "Hold me, dread sovereign, excused. Your majesty well knows I find no reason to swerve from the Catholic faith, in which you and I were brought up. I can never, therefore, countenance the persecution of its professors. I should not have in charge your Majesty's conscience one week before I should incur your displeasure, if it be your Majesty's royal intent to continue the system of persecuting

the retainers of the Catholic faith."—2 Notes and Queries, I, 12.

A COMING LORD CHANCELLOR.

Sir Christopher Hatton, before he was made Lord Chancellor by Queen Elizabeth, was her vice chamberlain, and one of her special favourites, and it was said he was the only one of her troupe of gallants who remained single for her sake. She used to bestow pet names upon him, such as her "sheep," her "mutton," her "belwether," her "pecora campi," and her "lids," which last she occasionally varied by calling him "sweet lids," meaning eyelids. She encouraged him to write to her in the most extravagant style of devotion. Here is a little extract: "Pardon, for God's sake, my tedious writing. I will wash away the faults of these letters with the drops from your poor 'lids,' and so enclose them. Would God I were with you but for one hour. Bear with me, my most dear sweet lady; passion overcometh me. I can write no more. Love me, for I love you. Live for ever. He speaketh it that most dearly loveth you. Once again I crave pardon, and so bid your poor 'lids' farewell. Your bondsman everlastingly tied, C. Hatton." It was said that once, in a fit of passion, Elizabeth "collared" poor Sir Christopher. He was dying with envy of Sir W. Raleigh, the Duke of Anjou, and other rivals. She once had a serious quarrel about some gold buttons on his dress.

As the age of chivalry is gone, no modern Lord Chancellor has been known to excel in this letter writing.

THE DANCING CHANCELLOR IN SOCIETY.

While holding the Great Seal, Sir C. Hatton's greatest distinction continued to be his skill in dancing, and, as often as he had an opportunity, he abandoned himself to this amusement. Attending the marriage of his nephew and heir with a judge's daughter, he was decked, according to the custom of the age, in his official robes; and it is recorded that when the music struck up, he doffed them, threw them down on the floor, and saying, "Lie there, Mr. Chancellor!" danced the measures at the nuptial festivity.

At Stoke Poges, in Buckinghamshire, he had a country house constructed in the true Elizabethan taste. Here, when he was Lord Chancellor, he several times had the honour to entertain her Majesty, and showed that the agility and grace which had won her heart, when he was a student in the Inner Temple, remained little abated. As Gray finely wrote of him:—

“ To raise the ceiling’s fretted height,
Each panel in achievements clothing,
Rich windows that exclude the light,
And passages that lead to nothing.

‘ Full oft within the spacious walls,
When he had fifty winters o’er him,
My brave Lord Keeper led the brawls,
The Seal and Maces danc’d before him.

“ His bushy beard and shoe-strings green,
His high-crown’d hat and satin doublet,
Mov’d the stout heart of England’s Queen,
Though Pope and Spaniard could not trouble it.’

THE CHANCELLOR’S FOOL.

When Sir Harry Norris was gone a little way, Wolsey (at the end of his career, after dismissal by the King) called him back, saying, “ I am sorry that I have no con-dign token to send to the King; but if you would present the King with this poor fool, I trust his Highness would accept him well; for surely, for a nobleman’s pleasure, he is worth a thousand pounds.” This fool, whose name was “ Patch,” was so much attached to his master, Wolsey, that it required six tall yeoman to force him to accompany Norris to Windsor, although he knew that he was to be transferred from disgrace and want to royalty and splendour. It is a pleasure to be told that the King received him most gladly.

A fool was so necessary to the establishment of a Lord Chancellor, that we shall find one in the household of Sir Thomas More. It is very doubtful when Chancellors ceased to have about them any such character.

CHANCELLOR MORE’S FOOL.

Lord Chancellor More, upon his resignation, set about providing for his officers and servants who were to leave

him, and he succeeded in placing them with bishops and noblemen. His state barge which carried him to Westminster Hall and Whitehall, he transferred, with his eight watermen, to his successor.

The Lord Chancellor's fool, who must have been a great proficient in jesting, practising under such a master, he made over to the Lord Mayor of London, with a stipulation that he should continue to serve the office of fool to the Lord Mayor for the time being.

This fool, whose name was Pattison, appears in Holbein's famous picture of the More family. One anecdote of him has been often related. When, at a dinner at Guildhall, the subject of his old master having refused to take the oath of supremacy was discussed, the fool exclaimed, "Why, what aileth him that he will not swear? Wherefore should he stick to swear? I have sworn the oath myself." —I Camp. Chanc., 562.

A CHANCELLOR CHARGED WITH TREASON.

Lord Chancellor Clarendon, when charged by some peers with treason, leaving the woolsack, made a pointed and animated defence, contending that all the charges which were not quite frivolous, were false; that none of them amounted to treason; and that an impeachment for treason could not thus be commenced by one peer against another, upon which points he desired that the judges might be consulted. The judges being summoned, pronounced their unanimous opinion by the mouth of Lord Chief Justice Bridgman, that the prosecution was not duly commenced, and that if the charges were all admitted to be true, there was nothing of treason in them. The King, seeing the result, very irregularly sent a message to the Lords, telling them that in the articles he finds many matters of fact charged which, upon his own certain knowledge, are untrue. The Lords resolved, *nemine dissente*, that they concurred with the judges, and they dismissed the prosecution, with a strong censure of the Earl of Bristol for the manner in which he had brought it forward. Warrants were issued for his apprehension, and he was obliged to remain in concealment for some years.

A LORD CHANCELLOR RIDING A RHINOCEROS.

The Court wags, in the time of Lord Keeper Guilford, made great sport of him, the Earl of Sunderland taking the lead and giving out the signal, while Jeffreys was always ready to join in the laugh. There was a famous example of this in "the story of the rhinoceros." My Lord Keeper went one day into the city, accompanied by his brother Sir Dudley, to see a rhinoceros of enormous size lately imported, and about to be exhibited as a show. Next morning, at Whitehall, a rumour was industriously spread that the Lord Keeper had been riding on the rhinoceros, "and soon after dinner, some lords and others came to his lordship to know the truth from himself; for the setters of the lie affirmed it positively as of their own knowledge. That did not give his lordship much disturbance, for he expected no better from his adversaries. But that his friends, intelligent persons, who must know him to be far from guilty of any childish levity, should believe it, was that roiled him extremely, and much more when they had the face to come to him to know if it were true. So it passed; and the Earl of Sunderland, with Jeffreys, and others of that crew, never blushed at the lie of their own making, but valued themselves upon it as a very good jest."—2 North's Life of Guilford, 167.

Evelyn tells us that this was the first rhinoceros ever introduced into England, and that it was sold for £2,000. Shakespeare may have seen "the Hyrcan Tiger," but he could only have heard, or read, or seen a picture of "the armed rhinoceros."

THE LORD KEEPER AND THE VIRTUOSO.

Roger North says his brother, the Lord Keeper Guilford, "had great pleasure in the society of Sir John Hoskins, the Master in Chancery, whose chief or rather entire application was to philosophy and experiments, and who was president of the Royal Society. After a long day's work, if his lordship could get Sir John to a French house for a *petit* supper, but ample feasts of discourse, he was happy: which I can the better testify, having often

been one of the company. There was no corner of the universe that imagination could make accessible, but they searched it to the quick; and nothing new sprang abroad or at home but one or other of them early or late brought it under examination. Another visitor was Mr. Weld, a rich philosopher, who lived in Bloomsbury. He was single, and his house a sort of knick-knack-atory. Most of the ingenious persons about town sometimes visited him, and among the rest his lordship did suit and service there. This gentleman valued himself upon new inventions of his own. He sowed salads in the morning to be cut for dinner, and claimed the invention of painted curtains in varnish upon silk, which would bend and not crack. And his house was furnished with them, and he delighted in nothing more than in showing his multifarious contrivances."

A LORD CHANCELLOR AT THE HUSTINGS.

At a contested election for Arundel, in Sussex, the government were so anxious to succeed that Lord Chancellor Jeffreys was prevailed on to go down and use his influence there. On the day of election he took up a position near the mayor, who was the returning officer, and a retired attorney. The mayor rejecting the vote of one of the court party, Jeffreys rose in a heat, and insisted on the vote being received, and to give weight to his word added: "I am the Lord Chancellor of this realm." The mayor, regarding him with a look of contempt, replied, "Your ungentlemanlike behaviour convinces me that it is impossible you can be the person you pretend. If you were the Chancellor, you would know that you have nothing to do here, where I alone preside." Then turning to the crier, he said, "Officer, turn that fellow out of court." The command was at once obeyed, and the Chancellor retired to his inn in great confusion, and the election was won by the popular favourite. In the evening, the mayor received a message, to his great surprise, from Jeffreys, desiring the favour of his company, which was declined: whereon Jeffreys came to the mayor, and said he could not help complimenting him on the very proper spirit of independence he had displayed.

THE LORD CHANCELLOR RESCUING A MAD DOG.

In 1807, as Lord Chancellor Erskine was passing through Holborn on foot, he observed a number of men and boys hunting and beating on the head a little dog with sticks, under the idea of his being mad. His lordship, with great humanity, having on the view, and without the aid of a jury or a commission *de lunatico*, observed not the least symptom of madness, rushed into the crowd, seized the poor animal from the hands of its destroyers, and carried it some distance, till he met a boy, whom he hired to carry it home with him to his house in Lincoln's Inn Fields, when he gave it into the care of a servant, to be taken to his lordship's stables.

. LORD CHANCELLOR OF GREAT BRITAIN.

On the Union with Scotland, the Chancellor was designated "Lord High Chancellor of Great Britain;" and now his proper title is "Lord High Chancellor of Great Britain and Ireland"—the Great Seal which he holds testifying the will of the Sovereign as to acts which concern the whole empire, although there are certain patents confined in their operation to Scotland and Ireland respectively, which still pass under the separate Great Seals appropriated to those divisions of the United Kingdom.—1 Camp. Chanc., 22.

THE FIRST LORD CHANCELLOR OF GREAT BRITAIN.

The Act of Union between England and Scotland provided that there should be one Great Seal for the United Kingdom, although a Seal should still be used in Scotland in things relating to private right; and Lord Cowper was the first Lord Chancellor of Great Britain, being so declared by the Queen in Council, on the 4th of May, 1707, four days after the Act came into operation. On the assembling of the United Parliament, the Queen, in a speech which he prepared, said piously and pointedly, "It is with all humble thankfulness to Almighty God, and with entire satisfaction to myself, that I meet you here in this first Parliament of Great Britain; not

doubting that you come with hearts prepared, as mine is, to make this Union so prosperous as may answer the well-grounded hopes of all my good subjects, and the reasonable apprehensions of our enemies."

THE LORD CHANCELLOR'S NEW YEAR'S GIFTS.

One most beneficial change was effected by his own authority, and from his own sense of what was right, by Lord Chancellor Cowper. Hitherto, according to ancient custom, large "New Year's Gifts" were annually made by all the officers of the Court of Chancery to the Lord Chancellor or Lord Keeper. The consequence was that, for their reimbursement, they were allowed to extort large fees from their suitors; constant reluctance was felt to visit their delinquencies with suitable punishment, and the judge was crippled in the discharge of his most important duties. This usage was common to all the courts in Westminster Hall. But there was another of more monstrous nature, and still more pernicious, which was peculiar to Chancery; that all the counsel who practised in the court came to breakfast with the Chancellor, on the first of January in every year, and, in the hope of being raised to the bench, or of obtaining silk gowns, or of winning "the judge's ear," made him a pecuniary present, according to their generosity, or their means, or their opinion of his venality or stability. All these New Year's Gifts were utterly abolished by Lord Cowper.

CHANCELLOR MACCLESFIELD CHARGED WITH CORRUPTLY SELLING OFFICES.

There has been a disposition in recent times to consider that Lord Macclesfield was wrongfully condemned. "The unanimity of his judges," says Lord Mahon, "might seem decisive as to his guilt, yet it may perhaps be doubted whether they did not unjustly heap the faults of the system on one man; whether Parker had not rather, in fact, failed to check gradual and growing abuses, than introduced them by his authority, or encouraged them by his example." Lord Campbell, however, says: "Al-

though it is impossible not to pity a man of such high qualities when so disgraced; and it must be acknowledged that, with good luck, notwithstanding all that he did, he might have escaped exposure, and preserved an untarnished fame; yet, in my opinion, his conviction was lawful, and his punishment was mild. There can be no doubt that the sale of all offices, touching the administration of justice (with a strange exception in favour of Common Law Judges), was forbidden by the Statute of Edward VI., and every Chancellor who afterwards sold a Mastership in Chancery must have been aware that he was thereby violating that statute. It is a fallacy to say that he was fully justified by the example of his predecessors. Lord Cowper had abolished 'New Year's Gifts' from the officers of the court, as well as from the bar, and had been followed in the same course by Lord Harcourt; both Chancellors showing a desire to conform to the improving spirit of the age. In Lord Macclesfield's time, from the speculations caused by the South Sea mania, the abuses in the Masters' offices had become more flagrant. But instead of trying to redress them, he increased their enormity, by raising the price which the Masters were to pay for their places, and rendering it still more necessary that, for their own indemnity, they should traffic with the trust money in their hands. Whoever takes the trouble of perusing the whole of the evidence, will see that he was rapacious in his bargains, and that, with the view of bolstering up a system which was so profitable to him, he resorted to very arbitrary means to keep the public in ignorance of its consequences. His contemporaries could form a more correct opinion of his conduct than we can, and we should be slow to accuse them of harshness."—4 Camp. Chanc., 555.

A CHANCELLOR TAUNTED WITH MEAN BIRTH.

Lord Chancellor Thurlow, being reproached by the Duke of Grafton, in the House of Lords, with his mean origin, rose from the woolsack, and advanced slowly to the place from which the Chancellor generally addresses the House, then fixing on the duke the look of Jove when he grasped the thunder, "I am amazed," he said in

a loud tone of voice, "at the attack the noble duke has made on me. Yes, my lords," considerably raising his voice, "I am amazed at his grace's speech. The noble duke cannot look before him, behind him, or on either side of him, without seeing some noble peer who owes his seat in this House to successful exertions in the profession to which I belong. Does he not feel that it is as honourable to owe it to these, as to being the accident of an accident? To all these noble lords the language of the noble duke is as applicable and insulting as it is to myself. But I don't fear to meet it single and alone. No one venerates the peerage more than I do; but, my lords, I must say, that the peerage solicited me, not I the peerage. Nay, more, I can say, and will say, that as a Peer of Parliament, as Speaker of this right honourable House, as Keeper of the Great Seal, as guardian of his Majesty's conscience, as Lord High Chancellor of England, nay, even in that character alone, in which the noble duke would think it an affront to be considered—as a man—I am at this moment as respectable, I beg leave to add, I am at this moment as much respected, as the proudest peer I now look down upon."

The effect of this speech, both within the walls of Parliament and out of them, was prodigious. It gave Lord Thurlow an ascendancy in the House which no Chancellor had ever possessed; it invested him in public opinion with a character of independence and honour; and this, though he was ever on the unpopular side in politics, made him always popular with the people. From this time every peer shrunk from the risk of any encounter with Thurlow, and he ruled the House with a rod of iron; saying and doing what he pleased, and treating his colleagues with very little more courtesy than his opponents.—5 Camp. Chanc., 535; C. Butler's Mem.

A CHANCELLOR HESITATING TO TAKE THE OFFICE.

It is reported that when Lord Hardwicke was offered the Lord Chancellorship, he had great hesitation in giving up the permanent post of Lord Chief Justice of England, with its valuable perquisites, for the temporary office of

Chancellor. Sir R. Walpole, Premier, then worked upon his jealousy, and said if he persisted in refusing the seals they must be offered to Fazakerley. "Fazakerley!" exclaimed Lord Hardwicke, "impossible! he is certainly a Tory, perhaps a Jacobite!" "It's all very true," replied Sir Robert, taking out his watch, "but if by one o'clock you do not accept my offer, Fazakerley by two becomes Lord Keeper of the Great Seal, and one of the staunchest Whigs in England."—Walpole's Letters.

A SNUG APPOINTMENT FOR THE CHANCELLOR'S SECOND SON.

Sir R. Walpole to Horace Walpole writes in 1726: "I received a letter from the Lord Chancellor (Talbot) to desire his Majesty would be pleased to let him name a successor to the office of Clerk of the Dispensations, now vacant. The office, his lordship says, is wholly under him. I acquainted her Majesty with the request, who was pleased to think it reasonable; and ordered me to lay it before his Majesty. The person the Lord Chancellor will propose is his second son, but desires that it may not be known, lest so long notice before his new election should stir up an opposition and give him trouble. I send you a letter from the Lord Chancellor upon this subject."

LORD CHANCELLOR HARDWICKE'S VULGARITY.

"Lord Hardwicke was undoubtedly an excellent Chancellor," says Lord Waldegrave, "and might have been thought a great man, had he been less avaricious, less proud, and less unlike a gentleman." "The stately and ceremonious reception of his visitors on a Sunday evening," says Cooksey, "was insipid and disgusting in the highest degree. Stranger as he was to the life and habits of country gentlemen, he treated them with insulting inattention and hauteur. Came they from ever so great a distance, either to visit his lordship or to see his place, their horses were sent for refreshment to the 'Tiger,' a vile inn near half a mile distant, as I have experienced more than once. He submitted, indeed, like other lords, sometimes to entertain the natives, but with that visible

and contemptuous superiority as disgusted rather than obliged them. When in high good humour, he had two or three stock stories to make his company laugh, which they were prepared and expected to do. One was of his bailiff, Woodcock, who, having been ordered by his lady to procure a sow of the breed and size she particularly described to him, came one day into the dining-room, when full of great company, proclaiming with a burst of joy he could not suppress, 'I have been at Royston fair, my lady, and got a sow exactly of your ladyship's breed and size!'

"He also used to relate an incident that occurred to him in a morning ride from Wimple. Observing an elegant gentleman's house, he conceived a wish to see the inside of it. It happened to be that of Mr. Montague, brother to Lord Sandwich, who, being at home, very politely, without knowing his lordship, conducted him about the apartments, which were perfectly elegant; and expatiated on the pictures, some of which were capital. Among these were two female figures, beautifully painted, in all their native naked charms. 'These ladies,' says the master of the house, 'you must certainly know, for they are most striking likenesses.' On the guest's expressing his perfect ignorance: 'Why, where the devil have you led your life, or what company have you kept,' says the Captain, 'not to have known Fanny Murray and Katy Fisher, with whose persons I thought no fashionable man like you could be unacquainted?' On my taking leave, and saying, 'I should be glad to return his civilities at Wimple,' what surprise and confusion did he express on his discovering he had been talking all this badinage to Lord Hardwicke!"

THE LORD CHANCELLOR'S COUNTERPANE.

One may judge of the malicious turn given to Lady Hardwicke's domestic arrangements, however deserving of praise, by the charge against her of stealing the purse in which the Great Seal was kept, to make a counterpane. The truth is that this purse, highly decorated with the royal arms and other devices, by ancient custom is annually renewed, and is the perquisite of the Lord

Chancellor for the time being, if he chooses to claim it. Lady Hardwicke, availing herself of this custom, caused the purse, with its decorations, to be put as embroidery on a large piece of rich crimson velvet, corresponding to the height of one of the state rooms at Wimple. These purses, just twenty in number, complete the hangings of the room, and the curtains of a bed, singularly magnificent. She, therefore, in reality, only prepared a characteristic and proud heirloom to be handed down to commemorate the founder of the family.

A CHANCELLOR DELAYING HIS STEP IN THE PEERAGE.

By his wife's desire, Lord Chancellor Hardwicke deferred his acceptance of an earldom which had been offered him—the offer repeated for many years after the offer was first made—until, in short, the marriage of his daughters. For, as Lady Hardwicke observed, “though no suitors would expect more than £10,000 with the Misses Yorke, yet not less than £20,000 would be anticipated with Lady Elizabeth and Lady Margaret.”—*1 Law and Lawyers*, 357.

A CHANCELLOR FOR THREE DAYS.

As soon as the council was over, Lord Chancellor Charles Yorke, son of Lord Hardwicke, carrying away the Great Seal with him in his carriage, drove to Lord Rockingham's, to communicate to him what he had done. It so happened that Lord Rockingham, Lord Hardwicke (the second), and the other leaders of the Opposition, were then holding a meeting to concert measures against the Government. He was introduced to them, and unfolded his tale. We are told that it was received with a burst of indignation, and that all present upbraided him for a breach of honour.

He instantly left them and went home, his mind sorely harassed with the severity of their reproaches. It was announced that very evening that he was dangerously ill, and at five o'clock in the evening of Saturday, the 20th of January, three days after he had been sworn in Chancellor, he was no more. His patent of nobility had

been made out, and was found in the room where he died, but the Great Seal had not been affixed to it, so that the title did not descend to his heirs. He expired in the forty-eighth year of his age. A suspicion of suicide immediately arose, and a controversy has ever since been maintained on the question whether that suspicion was well founded. It is a subject delicate and painful, and the doubt has never been satisfactorily removed. He had been admitted to an interview with the King, who talked him over, and thus no doubt led him to break faith with his political party, whose reproaches he could not apparently endure.—Life of Hardwicke.

A CHANCELLOR FOR SIXTEEN DAYS.

Lord Campbell was, on 17th of June, 1841, candidate to represent Edinburgh in Parliament. On 18th of June he was appointed Lord Chancellor of Ireland. He reached Dublin on 28th of June, and on 2d of July a great crowd of Irish barristers met in the Irish Court of Chancery, to see and hear the successor of Lord Plunket. The new Lord Chancellor, on reaching the court at eleven o'clock, intimated that he could only hear short causes before closing the sittings. He heard one or two such causes, and on the following day he rose not to return. He was Lord Chancellor for sixteen days, and sat in court twice for a short time only. On the day of Lord Campbell's arrival in Dublin there was a violent storm at sea, and some one remarked to Plunket, his predecessor, that Campbell must have felt sick of the whole business by this time. "No fear of that: it won't make *him throw up* the seals!"

A CHANCELLOR MAKING TERMS ON ACCEPTING THE OFFER OF OFFICE.

Lord Hardwicke wrote to Pitt, the first, in 1757: "Since I saw my Lord Chief Justice Willes, I have seen Sir Robert Henley, who talks very reasonably and honourably. His proposals are, first, a reversionary grant of the office of one of the tellers of Exchequer to his son for life; second, a pension of £1,500 per annum on the Irish establishment to himself for life, to commence and

become payable upon his being removed from the office of Lord Keeper and not before, but to be determinable and absolutely void upon the office of teller coming into possession to his son. My present opinion is, that the King may be induced to agree to this on Monday; for when I hinted in my discourse at a pension upon Ireland, though his Majesty treated it pretty severely at first, yet, when I stated the several contingencies in which it might in this case never become any real charge upon the revenue, he said of himself, that made the case different."

TWO CANDIDATES FOR CHANCELLOR.

Henley owed his elevation to the Chancellorship to an accident. When the Pitt and Fox ministry came in, in 1757, the Great Seal was offered successively to Lord Hardwicke, Lord Mansfield, Sir Thomas Clarke, Chief Justice Willes, and Sir John Wilmot. They all, however, declined it. The ministry had then no other alternative but to raise the Attorney-General, Henley, to the woolsack. "There is an amusing anecdote," says Lord Henley, "respecting this transaction current in the profession, and which the late Lord Ellenborough used to relate with his characteristic good humour." Immediately after Willes had refused the seals, Henley called upon him at his villa, and found him walking in his garden, highly indignant at the affront which he considered that he had received in an offer so inadequate to his pretensions. After entering into some detail of his grievances, he concluded by asking whether any man of spirit would, under such circumstances, have taken the Seals, adding: "Would you, Mr. Attorney, have done so?" Henley, thus appealed to, gravely told him that it was too late to enter into such a discussion, as he was then waiting upon his lordship to inform him that he had actually accepted them. Henley held the Seal, as Lord Keeper, without a peerage until Lord Ferrers' trial, in 1760, when he was created Baron Henley. On the accession of George III. he surrendered the Great Seal, which was returned to him as Lord Chancellor, and within a few months he was created Earl of Northington.—1 Law and Lawyers, 89.

NURSING A CHANCELLOR'S LEGS.

Like most men of the day, Lord Chancellor Northington had in his youth enjoyed the pleasures of the table; but many a severe fit of the gout was the result of his early indulgences. When suffering from its effects one day, he muttered, after a painful walk between the woolsack and the bar: "If I had known that these legs were one day to carry a Chancellor, I'd have taken better care of them when I was a lad."

THE LORD CHANCELLOR'S FATHER.

Lord Bathurst was spared to behold his son, well stricken in years, sitting on the woolsack as Lord High Chancellor, being the only individual, except the father of Sir Thomas More, on whom such a felicity was ever conferred.

Lord Chancellor Hardwicke was dead before his son Lord Chancellor Charles Yorke was appointed, and who filled the office for three days only.

CHANCELLOR QUARRELING WITH AN OLD WOMAN.

When Lord Chancellor Bathurst built Apsley House, he got into a controversy with a soldier's widow about a spot of ground at Hyde Park Corner, and she having filed a bill against him, he gave her a sum of money to relinquish her claim. A witty barrister was represented to have observed on the occasion, "Here is a suit by one old woman against another, and the chancellor has been beaten in his own court."

LORD CHANCELLOR APPROVING THE LORD MAYOR.

Stories were invented and circulated respecting the Lord Chancellor Bathurst which showed the low estimation in which he was held. One was that his lordship, on Wilkes being elected Lord Mayor of London, had threatened, in the exercise of the royal prerogative, when the profligate patriot was presented for confirmation, to disallow the choice of the citizens, till told that this would be Wilkes' reply: "I am fitter for my office than you are for yours, and I must call upon the King to choose another Lord Chancellor."

THE ONLY LORD CHANCELLOR CONGRATULATED BY THE
WHOLE BAR ON APPOINTMENT.

Considering how political enmities and private jealousies oppose such an expression of good will to a barrister on his elevation to the woolsack, we need not wonder that it was a solitary instance in the annals of the profession, for the bar to congratulate Lord Erskine, after holding a meeting in Westminster Hall. One may form some conception of the fascinating manners and real kindness of heart, as well as of the brilliant genius, which called it forth. Lord Erskine caused a good deal of merriment in Westminster Hall by the heraldic honours which, on his own suggestion, were accorded to him. Retaining his family shield and crest, he had for supporters, "a Griffin, wings elevated, gules, charged with a mullet, and a Heron, wings mounted, holding in the beak an eel proper" (on which many jokes were made), and he took for his motto, "Trial by Jury." That of his father was "Judge Nought." All allowed that it would not have been very appropriate, but it was said that "By Bill in Equity" would have been a better substitution on his going into the Court of Chancery, and that "Trial by Jury" was a vain imitation of Lord Camden's motto from Magna Charta, *Judicium Parium, aut Lex Terræ*. Soon after, a barrister setting up his carriage, in still worse taste, put upon his panels "Causes produce Effects," equal to the tobacconist's "*Quid rides*," or the water-doctor's ducks crying, "Quack! Quack!"—6 Camp. Chanc., 557.

LORD THURLOW PORTRAYED BY A CRITIC.

The following strictures were made, in 1790, on Thurlow, an eminent or conspicuous judge of last century. "Thurlow's unrivalled excellence is an iron countenance, an inflexible hardihood of feature, an invulnerable, impenetrable aspect that nothing can abash, no crimson tinge, that stares humanity from the justice seat, and defies the tear of pity. Charity, it is said, covers a multitude of sins, and inhumanity implies a depravity of heart that gives the owner credit for the possession of untold crimes.

"Vast in his person, bold in his sentiments, pompous in

his words, and powerful, not so much in the qualities of wisdom, as in the consequence given to trifles, he has secured the prejudices of the Upper House. He has obtained all that could possibly be expected by a man of mean extraction with the aid of oratorical abilities."

LORD CHANCELLOR THURLOW NEVER FORGETTING HIS SOVEREIGN.

Lord Chancellor Thurlow, when George III. was believed by everybody to be insane, resolved to stand by his master. He once worked himself up to this celebrated climax: "A noble viscount (Stormont) has, in an eloquent and energetic manner, expressed his feelings on the present melancholy situation of his Majesty, feelings rendered more poignant from the noble viscount's having been in habits of personally receiving marks of indulgence and kindness from his suffering Sovereign. My own sorrow, my lords, is aggravated by the same cause. My debt of gratitude is indeed ample for the many favours which have been graciously conferred upon me by his Majesty; and when I forget my Sovereign, may my God forget me!" "God forget you!" muttered Wilkes, who happened then to be seated on the steps of the throne, eyeing him askance, with his inhuman squint and demoniac grin, "God forget you! He'll see you d——d first."

A CHANCELLOR'S SYMPATHY FOR THE KING DURING ILLNESS.

Burke, in reference to the ostentatious professions of sympathy on the part of Lord Chancellor Thurlow, when alluding to the King's illness, made this sarcastic observation: "The theatrical tears then shed were not the tears of patriots for dying laws, but of lords for their expiring places. The iron tears that flowed down Pluto's cheek, rather resembled the dismal bubbling of the Styx than the gentle murmuring streams of Aganippe: in fact, they were the tears for his Majesty's bread, and those who shed them would stick by the King's loaf as long as a single cut of it remained, while even a crust of it held together."—Prior's Burke, 334.

THE LORD CHANCELLOR'S BREAKFAST AND PROCESSION.

Lord Chancellor Shaftesbury, on his installation, determined to amuse the metropolis with a sight that had not been seen for half a century. Coaches were introduced into England in the latter end of the reign of Elizabeth, and had for many years become so common that the ancient custom of the Chancellor and the judges riding on horseback to Westminster Hall, to open the term, had been entirely laid aside, and the Chancellor had headed the procession in a grand gilt carriage, almost as large as a house; being followed by the judges, the King's serjeants, the King's counsel, etc., in modern equipages. They still continued to "ride the circuit" on sober pads; but the *manège* for learning to sit the great horse, which used to be frequented by the gentlemen of the Inns of Court, was very much neglected, and the practice of riding managed horses in the streets of London had fallen into entire disuse. Shaftesbury, who had been bred a country squire, and had been colonel of a regiment of cavalry, piqued himself much upon his horsemanship, and to gratify his morbid appetite to be talked of, and out of malice to some of the old judges, who he heard had been sneering at his decisions, he issued an order that, on the first day of Hilary Term, 1673, there should be a judicial cavalcade, according to ancient form, from Exeter House, in the Strand, the place of his residence, to Westminster Hall. On that day he gave a sumptuous breakfast, not only to noblemen, judges, and other dignitaries, but to all the barristers, all the students of the Inns of Court, and the sixty clerks, with all the other officers, of the Court of Chancery. He then mounted his richly caparisoned charger, preceded by those who bore the insignia of his authority, his master of the horse, page, groom, and six footmen walking along by his stirrup. This procession marched by the Strand, through the quadrangle at Whitehall, to King Street, then the only entrance to Palace Yard, and so to Westminster Hall. Judge Twisden, in his great affright, and to the consternation of his grave brethren, was laid along in the dirt; but all at length arrived safe, without loss of life or limb in the service. This accident was enough to

divert the like frolic for the future, and the very next term after, they fell to their coaches as before.—North's Examen, 57.

LORD CHANCELLOR THURLOW'S POPULARITY.

Whatever others might think of Lord Chancellor Thurlow, he gave high satisfaction to his employers. Above all, the King was excessively delighted with his strong and uncompromising language respecting the Americans; and long placed a greater personal confidence in him than he had done in Lord Bute, or than he ever did in any other minister, perhaps, with the exception of Lord Eldon.

This Chancellor did not disappoint public expectation, and as long as he enjoyed the prestige of office, he contrived to persuade mankind that he was a great judge, a great orator, and a great statesman. Lord Campbell says: "I am afraid that in all these capacities he was considerably overrated, and that he owed his temporary reputation very much to his high pretensions and his awe-inspiring manners."

Having been at the head of the law of this country for near thirteen years, he never issued an order to correct any of the abuses of his own court, and he never brought forward in Parliament any measure to improve the administration of justice. He is said to have called in Hargrave, the very learned editor of "Coke upon Littleton," to assist him in preparing his judgments, and some of them show labour and research; but he generally seems to have decided off-hand, without very great anxiety about former authority. Frequently he employed Mr. Justice Buller, a very acute special pleader and *nisi prius* lawyer, to sit for him in the Court of Chancery. On resuming his seat, he would highly eulogize the decisions of "one whom he, in common with all the world, felt bound to respect and admire." But being privately asked "how Buller had acquired his knowledge of equity?" "Equity!" said he; "he knows no more of it than a horse, but he disposes somehow of the cases, and I seldom hear more of them."

HOW A LORD CHANCELLOR APPOINTED JUDGES.

Lord Holland used to tell a story of Lord Thurlow, whom he mimicked exactly. When Lord Mansfield resigned, Thurlow said, "I hesitated a long time between Kenyon and Buller. Kenyon was very intemperate, but Buller was so d——d corrupt. And I thought, upon the whole, that intemperance was a less fault in a judge than corruption; not but that there is a d——d deal of corruption in Kenyon's intemperance."—I Greville's Mem., 278.

LORD CHANCELLOR AND PREMIER APPOINTING JUDGES.

Lord Eldon said that when he was Lord Chancellor, on the occasion of a vacancy on the bench by the death of one of the puisne judges, the Prime Minister of the day took on himself to recommend a certain gentleman to the King as a very fit person to fill the vacancy. The Chancellor, finding there was a disposition in the King to take that recommendation, very respectfully urged that it was on the responsibility of the Lord Chancellor that these judges were appointed, and that he should not consider himself worthy of holding the Great Seal, if he permitted the advice of any other man to be taken, at the same time tendering his resignation. The Prime Minister gave way, and the gentleman of the Lord Chancellor's choice was appointed.

LORD CHANCELLOR APPOINTING PUISNE JUDGES.

Lord Chancellor Lyndhurst always declared the doctrine, and acted upon it, that the holder of the Great Seal has the exclusive right of appointing the puisne judges, and ought *proprio Marte* to take the pleasure of the Sovereign upon their appointment, without any communication with the Prime Minister, or any other of his colleagues. Lord Campbell says upon this: "Two years before, although a notorious Whig, I had been placed at the head of the Real Property Commission. This was Peel's doing; but in 1830, Lyndhurst, in a very handsome manner, addressed to me a laudatory epistle, offering to make me a puisne judge of the Court of King's Bench. I had recently been returned to the House of Commons

for the borough of Stafford, and, from my position at the bar, I was not prepared to be shelved. But I was nevertheless obliged to him, and I accompanied my refusal of the offer with very warm thanks for his kindness."—8 Camp. Chanc., 67.

A CHANCELLOR'S CONSCIENCE.

Lord Eldon, defending himself against the attacks of Earl Grey, for signing with the Great Seal while the King was insane, said: "I say that, acting conscientiously, so help me God, I could not have done otherwise than I did. Whilst I have the approbation of my own conscience, I am ready to incur every risk, and submit to all the responsibility to which I am exposed by the faithful discharge of my duty. But what, I will ask, is the nature of the crime imputed to me? Why, that on the occasions in question I acted in obedience to his Majesty's commands. What would the noble earl (Lord Grey) have thought of my conduct, if I had refused compliance? What kind of crime would the noble lord have held me guilty of, if I had dared to disobey the positive commands of the Sovereign? I acted then upon my conscience, and to the best of my judgment; my rule of conduct is the same on this occasion. I will act on my oath in spite of the opposition of the whole world. It is my opinion, so help me God, that there is a most material amendment in his Majesty. It is little more than forty-eight hours since I had an opportunity of ascertaining this improvement; and I trust in God that my gracious master will live many years, to be, as he always has been, the benefactor of his subjects."

Earl Grey replied: "I am bound to arraign the noble and learned lord for an offence little short of high treason. What, I ask, would be the character, what the appropriate punishment of his offence, who, knowing his Sovereign to be actually at the time incompetent, who in the full conviction of his notorious and avowed incapacity, and whilst he was under medical care and personal restraint, should come here and declare that there was no necessary suspension of the royal functions?"

HOW A LORD CHANCELLOR MADE AN APPOINTMENT.

Lord Eldon told the following story of an appointment he made: "The Prince Regent, after having applied to me repeatedly at Carlton House to appoint Mr. Jekyll a Master in Chancery without effect, and having often observed that a man of Mr. Jekyll's sense and abilities would soon be able to learn his business (which might be very true, but the appointment would nevertheless introduce a most inconvenient host of candidates from the Common Law Bar for Chancery offices), at length, in furtherance of his purpose, took the following step. He came along to my door in Bedford Square. Upon the servant's going to the door, the Prince Regent observed that, as the Chancellor had the gout, he knew he must be at home, and he therefore desired he might be shown up to the room where the Chancellor was. My servants told the Prince I was much too ill to be seen. He, however, pressed to be admitted, and they very properly and respectfully informed him they had positive orders to show in *no one*. Upon which he suddenly asked them to show him the staircase, which, you know, they could not refuse to do. They attended him to it, and he immediately ascended, and pointed first to one door and then to another, asking, 'Is that your master's room?' they answering 'No,' until he came to the right one, upon which he opened the door and seated himself by my bedside. Well, I was rather surprised to see his Royal Highness, and asked his pleasure. He stated he had come to request that I would appoint Jekyll to the vacant Mastership in Chancery. I respectfully answered that I deeply regretted his Royal Highness should ask that, for I could not comply. He inquired why I could not, and I told him, simply because, in my opinion, Mr. Jekyll was totally unqualified to discharge the duties of that office. He, however, repeated his request, and urged very strongly. I again refused, and for a great length of time he continued to urge, and I continued to refuse, saying Mr. Jekyll was unfit for the office, and I would never agree. His Highness suddenly threw himself back in his chair, exclaiming, 'How I do pity Lady Eldon!' 'Good God!' I said, 'what is the matter?' 'Oh, nothing.'

answered the Prince, 'except that she never will see you again, for here I remain until you promise to make Jekyll a Master in Chancery.' Well, I was obliged at length to give in; I could not help it. Others ought really to be very delicate in blaming appointments made by persons in authority, for there often are very many circumstances totally unknown to the public. However, Jekyll got on capitally. It was an unexpected result. I met Jekyll the day after his retirement from the office. He said, 'Yesterday, Lord Chancellor, I was your master: to-day, I am my own master.' "

A DINNER PARTY AT THE LORD CHANCELLOR'S.

Sir J. Reresby says: "On 18th January, 1685, I dined with the Lord Chancellor Jeffreys, where the Lord Mayor of London was a guest, and some other gentlemen. His lordship having, according to custom, drank deep at dinner, called for one Montfort, a gentleman of his who had been a comedian, an excellent mimic, and to divert the company, as he was pleased to term it, he made him plead before him in a feigned cause, during which he aped all the great lawyers of the age, in their tone of voice, and in their action and gesture of body, to the very great ridicule, not only of the lawyers, but of the law itself, which to me did not seem altogether so prudent in a man of lofty station in the law. Diverting it certainly was, but prudent in the Lord Chancellor I shall never think it."

ATTENDING A CHANCELLOR'S FUNERAL.

When the first Irish Chancellor, Lord Clare, died, some barristers thought it proper that the bar should attend his funeral; but the judge had made so many enemies, it was thought a delicate business to get the leaders to agree. A deputation went to secure Mr. Keller, a leading counsel, and, after much beating about the bush, said, "Well, Lord Clare is to be buried to-morrow." "'Tis generally the last thing done with dead chancellors," said Keller, coolly. "He'll be buried in St. Peter's," said the spokesman. "Then he's going to a friend of the family," said Keller; "his father was a papist." This rather discon-

certed the deputation. At last one said, "My dear Keller, the bar mean to go in procession; have you any objection to attend Lord Clare's funeral?" "None at all," said Keller; "I shall certainly attend his funeral with the greatest pleasure imaginable."

THE WOOLSACK AND THE BAR, THE ORIGIN OF TERMS.

There are woolsacks in the House of Lords for the judges and other assessors, as well as for the Lord Chancellor. They are said to have been introduced into the House of Lords as a compliment to the staple manufacture of the realm; but Lord Campbell observes that in the rude simplicity of early times, a sack of wool was frequently used as a sofa, when the judges sat on a hard wooden *bench*, and the advocates stood behind a rough wooden rail called the bar.—1 Camp. Chanc., 17.

BREAKING OF THE GREAT SEAL.

For some time Lord Keeper Bacon used the Great Seal of Philip and Mary; but on the 26th of January, 1559, this seal was broken by Queen Elizabeth's commands, and she delivered to him another, with her own name and insignia. From the first he gained the confidence of the youthful Queen, who, says Camden, "relied upon him as the very oracle of the law."

GREAT SEAL OF THE COMMONWEALTH.

At the Restoration, Charles II. was accompanied by Sir Edward Hyde, whom he had instituted his Chancellor while in exile, and to whom he had delivered a Great Seal, which he had caused to be made, bearing his name, style, and arms. The Commonwealth Great Seal was no more wanted, and it was dealt with as the royal Great Seal had been in the year 1646, after the surrender of Oxford. On the 28th of May, 1660, the Commons resolved, "that the Great Seal in the custody of Sir Thomas Widdrington and the rest of the late Commissioners of the Great Seal, be brought into this House this forenoon, to be here defaced." Accordingly it was forthwith delivered to Sir Harbottle Grimston, the Speaker. "Being

laid upon the clerk's table, a smith was sent for, who broke it in pieces while the House was sitting," and the pieces were delivered to the Lords Commissioners for their fees. This was the final end of the Great Seal of the Commonwealth, which the King himself, in the treaty at Newport, had agreed to acknowledge, and under which justice had been long administered, commissions had been granted to victorious generals and admirals, and treaties, dictated by England, had been entered into with the most powerful nations in Europe.

The following day the two Houses of Parliament threw themselves on their knees before the King, at Whitehall, and Lord Chancellor Hyde was seen carrying the true Great Seal before him, in its red velvet purse, adorned with a representation of a royal crown, and all the heraldic bearings of an English monarch.

GREAT SEAL OF AN EXILED KING.

When Charles II. was in exile, he resolved to appoint a Chancellor, and told Hyde of many importunities with which he was every day disgusted, and that he saw no other remedy to give himself ease, than to put the Seal out of his own keeping into such hands as would not be importuned, and would help him to deny. And therefore he conjured the Chancellor to receive that trust, with many gracious promises of his favour and protection. Whereupon, the Earl of Bristol and Secretary Nicholas using likewise their persuasion, he submitted to the King's pleasure; who delivered the Seal to him in the Christmas time, in the year 1657.

BREAKING OF THE GREAT SEAL AND THE PIECES AS PERQUISITES.

When a Great Seal was broken that a new one may be used, an amicable contest, *honoris causâ*, once arose upon the subject between two of the most distinguished men who have ever held the office. Lord Lyndhurst was Chancellor on the accession of William IV., when, by an order in council, a new Great Seal was ordered to be prepared by his Majesty's chief engraver, but when it

was finished and an order was made for using it, Lord Brougham was Chancellor. Lord Lyndhurst claimed the old Great Seal, on the ground that the transaction must be referred back to the date of the first order, and that the fruit must therefore be considered as having fallen in his time; while Lord Brougham insisted that the point of time to be regarded was the moment when the old Great Seal ceased to be the "*clavis regni*," and that there was no exception to the general rule. The matter being submitted to the King, as supreme judge in such cases, his Majesty equitably adjudged that the old Great Seal should be divided between the two noble and learned litigants, and as it consisted of two parts, for making an impression on both sides of the wax appended to letters patent—one representing the Sovereign on the throne, and the other on horseback—the destiny of the two parts respectively should be determined by lot. His Majesty's judgment was much applauded, and he graciously ordered each part to be set in a splendid silver salver, with appropriate devices and ornaments, which he presented to the two keepers of his conscience, as a mark of his personal respect for them. The ceremony of breaking or "damasking" the old Great Seal consists in the Sovereign giving it a gentle blow with a hammer, after which it is supposed to be broken, and has lost all its virtue.—1 Camp. Chanc., 27.

SPLICING OF THE GREAT SEAL.

The following account of this last decision is given by Greville, in his "Memoirs." "King William IV. is a queer fellow. Our Council was principally for a new Great Seal, and to deface the old Seal. The Chancellor claims the old one as his perquisite. I had forgotten the hammer, so the King said, 'My lord, the best thing I can do is to give you the seal and tell you to take it and do what you like with it.' The Chancellor (Brougham) said, 'Sir, I believe there is some doubt whether Lord Lyndhurst ought not to have half of it, as he was Chancellor at the time of your Majesty's accession.' 'Well,' said the King, 'then I will judge between you, like Solomon: here (turning the seal round and round) now do you cry

heads or tails.' We all laughed, and the Chancellor said, 'Sir, I take the bottom part.' The King opened the two compartments of the Seal, and said, 'Now then I employ you as ministers of state. You will send for Bridge, my silversmith, and desire him to convert the two halves each into a salver, with my arms on one side and yours on the other, and Lord Lyndhurst's the same, and you will take one and give him the other, and both keep them as presents from me.' "

Lord Campbell, in his Autobiography, says a similar dispute arose between his predecessor, Lord Chelmsford, and himself, and her Majesty followed the precedent of William IV.

THE GREAT SEAL NEARLY STOLEN FROM LORD NOTTINGHAM.

It is related of Lord Chancellor Nottingham, that he comforted himself by taking the Great Seal to bed with him, and that thus, on the 7th of November, 1677, he saved it from the fate which then befell the mace, and afterwards the Great Seal itself, in the time of Lord Chancellor Thurlow, who had not treated it so tenderly. About one in the morning, says Wood, "the Lord Chancellor Finch his mace was stole out of his house in Queen Street. The Seal laid under his pillow, the thief missed it. The famous thief that did it was Thomas Sadler, soon after taken and hanged for it at Tyburn."

GREAT SEAL THROWN INTO THE THAMES.

Preparatory to James II. leaving the kingdom, on William III. landing, he had a parting interview with Lord Chancellor Jeffreys, to whom he did not confide his secret. but he obtained from him all the parliamentary writs which had not been issued to the sheriffs, amounting to a considerable number, and these, with his own hand, he threw into the fire, so that a lawful Parliament might not be assembled when he was gone. To increase the confusion, he required Jeffreys to surrender the Great Seal to him, having laid the plan of destroying it, in the belief that without it the government could not be conducted. All things being prepared, and Father Petre

and the Earl of Melfort having been informed of his intentions, which he still concealed from Jeffreys, on the night of the 10th of December, James, disguised, left Whitehall, accompanied by Sir Edward Hales, whom he afterwards created Earl of Tenterden. London Bridge (which they durst not cross) being the only one then over the Thames, they drove in a hackney coach to the Horse Ferry, Westminster, and as they crossed the river with a pair of oars, the King threw the Great Seal into the water, and thought he had sunk with it for ever the fortunes of the Prince of Orange. At Vauxhall they found horses in readiness for them, and they rode swiftly to Feversham, where they embarked for France.

GREAT SEAL FISHED FROM THE THAMES.

This Great Seal, the *Clavis Regni*, the emblem of sovereign sway, which had been thrown into the Thames that it might never reach the Prince of Orange, was found in the net of a fisherman, near Lambeth, and was delivered by him to the Lords of the Council, who were resolved to place it in the hands of the founder of the new dynasty.

THE GREAT SEAL STOLEN FROM LORD THURLOW.

Very early in the morning of the 24th of March, 1784, some thieves broke into Lord Thurlow's house, in Great Ormond Street, which then bordered on the country. Coming from the fields, they had jumped over his garden wall, and forcing two bars from the kitchen window, went up a stair to a room adjoining the study. Here they found the Great Seal, inclosed in the two bags so often described in the close roll, one of leather, the other of silk; two silver-hilted swords belonging to the Chancellor's officers, and a small sum of money. With the whole of this booty they absconded. They effected their escape without having been heard of by any of the family; and though a reward was offered for their discovery, they never could be traced. It will hardly be believed that Lord Loughborough, under whose legal advice the Whig party at that period acted, was so bad

a lawyer as to represent this burglary as a manœuvre to embarrass the government; although King James II. had thought that he had effectually defeated the enterprise of the Prince of Orange by throwing the Great Seal into the river Thames. Such expedition was used, that by noon the following day, a new Great Seal was finished, and the world went on as before.

THE GREAT SEAL OFTEN NOTHING BUT A PHANTOM.

Lord Eldon, when charged with using the Great Seal during the King's insanity, would have done better by resting his defence on the necessity of the case, and the difficulties and evils which must have arisen from following a contrary course. The fact that he did allow the King to sign commissions for passing bills; to swear in privy councillors; and to do other important acts of state, when his Majesty was wholly incompetent from mental disease, was from the first abundantly clear, but has since been placed beyond all controversy by the correspondence upon the subject communicated to the public.

GREAT SEAL USED AS A PHANTOM.

A violent altercation took place on Lord King's motion, that Lord Eldon should be excluded from being a member of the Queen's Council, to assist her in taking care of the King's person, on the ground that he had frequently obtained the King's signature for commissions when his Majesty, on account of mental disease, was under the care of physicians, who declared he was incompetent to act. Erskine did not speak on this very delicate topic, but he voted for the motion, and joined in a strong protest against its rejection, setting forth the instances in which this practice had been followed, and concluding with the allegation, that "John, Lord Eldon, having so conducted himself, is not a person to whom the sacred trust of acting as one of her Majesty's Council in the care of his Majesty's person, and in the discharge of the other most important duties committed to the said Council, can with propriety or safety be committed."

THE GREAT SEAL AT A WHITEBAIT DINNER.

When Erskine was Chancellor, being asked by the Secretary to the Treasury whether he would attend the grand Ministerial fish dinner, to be given at Greenwich, at the end of the session, he answered: "To be sure I will; what would your fish dinner be without the Great Seal?"

THE GREAT SEAL BURIED IN A FLOWER-GARDEN.

During the autumn of 1812, part of Lord Eldon's house at Encombe was destroyed by a fire. This, if it did not produce at the time as beautiful a letter as that from Sir Thomas More on a similar occasion, he afterwards described very graphically in his old age: "It really was a very pretty sight," said he; "for all the maids turned out of their beds, and they formed a line from the water to the fire engine, handing the buckets; they looked very pretty, all in their shifts." While the flames were raging, the Lord Chancellor was in violent trepidation about the Great Seal, which, although he was not in the habit, like one of his illustrious predecessors, of taking it to bed with him, he always kept in his bed-chamber. He flew with it to the garden, and buried it in a flower-border. But his trepidation was almost as great next morning, for, what between his alarm for the safety of Lady Eldon, and his admiration of the maids in their vestal attire, he could not remember the spot where the *clavis regni* had been hid. "You never saw anything so ridiculous," he said, "as seeing the whole family down that walk, probing and digging till we found it."—
7 Camp. Chanc.

CHAPTER XI.

ABOUT NICE POINTS AND THINGS NOT GENERALLY KNOWN.

HOW MANY TAILORS MAKE A RIOT.

A case came before Lord Eldon, as Chief Justice, on the circuit. At Exeter he had to try a number of tailors who were indicted before him for a riot, arising out of a combination for a rise of wages. Jekyll, for the defendants, cross-examining a witness as to the number present, the Lord Chief Justice reminded him that as, according to law, "three may make a riot," this inquiry was irrelevant. *Jekyll.* "Yes, my lord, Hale and Hawkins lay down the law as your lordship states it, and I rely on their authority; for, if there must be *three* men to make a riot, the rioters, being *tailors*, there must be *nine times three* present, and unless the prosecutor makes out that there were twenty-seven joining in this breach of the peace, my clients are entitled to an acquittal." *Lord Chief Justice* (joining in the laugh). "Do you rely on common law or statute?" *Jekyll.* "My lord, I rely on the well-known maxim, as old as Magna Charta, 'Nine tailors make a man.'" Lord Chief Justice Eldon overruled the objection; but the jury took the law from the counsel instead of the judge, and acquitted all the defendants.—Twiss's Eldon.

WHETHER CUSTOM CAN JUSTIFY A RIOT AT BULL-BAITING.

From time immemorial there had been annually at Stamford, in Lincolnshire, a bull-running or bull-baiting. The tradition was, that a field was given to the butchers of Stamford on condition that they should find a bull to

bait and torture, and foolish barbarities long flourished there. In 1836 the Society for Prevention of Cruelty to Animals tried to stop this brutal pastime, which made the people assemble riotously and break windows. An indictment for a riot was preferred at next assizes for conspiring to disturb the peace by riotously assembling. The defendants were popular, and a subscription was raised to defend them. At the trial Serjeant Goulburn was retained for the defence, and though he could not deny the riot, he pleaded use and custom and the ignorance of the defendants, who believed they were exercising a legal right. Justice Parke, however, in summing up, told the jury that no use or custom could justify a riot. A verdict of guilty was given, but the defendants were never called on to receive punishment. For two or three years following, the public tried to renew the bull-run, but the military were sent to disperse the mob, which cost the town £600. So, at last, the chief inhabitants saw the folly of perpetuating this antiquated brutality which threatened to be so expensive.

GIVING AWAY A LOTTERY TICKET ON CONDITIONS.

One Mr. Cornwallis, having set up a lottery called "The Wheel of Fortune; or, a Thousand Pounds for a Penny," Mrs. Fuller, the wife of Dr. Fuller, sent for twenty-four of those tickets, and gave them among the servants upon condition, if twenty shillings or more should come up, her daughter should have a moiety of the prize, and one of them thus given to her foot-boy, came up a prize of £1,000. The daughter brought her bill for the moiety of the money, and it was undeniably proved by the rest of the servants and others that the ticket, which cost but one penny, was given to the foot-boy on that condition. Lord Cowper, then Lord Chancellor, had to decide the case, and he said: "*Cujus est dare ejus est disponere*. The foot-boy is an infant, but he is bound by the condition as well as one of full age; he may be a trustee, and is a trustee as to £500, for the young lady." Decree was made accordingly, that £500 should be given to the young lady, as agreed at first. Camp. Chanc., 297.

SCRUPLES ABOUT THE LETTER OF THE LAW.

A tanner near Swaffham, in Norfolk, invited the supervisor of excise to dine with him, and after pushing about the bottle briskly, the latter gentleman took his leave. But, in passing through the tanyard, he unfortunately fell into a vat, and called lustily for the tanner's assistance to get him out, but to no purpose. Said the tanner: "If I draw any hides without giving twelve hours' notice, I shall be put in an exchequer process and ruined; but I'll go and inform the exciseman!"

WHEN DEMOLISHING MEETING HOUSES AMOUNTS TO TREASON.

It was once thought treasonable to demolish meeting houses and brothels. "A brothel," said Parker, C.J., on the trial of high church rioters, "is a nuisance, and may be punished as such, and being a particular nuisance to any one, if he enters to abate it, he may only be guilty of a riot; but if he will presume to pull down all brothels, he has taken the Queen's right out of her hand, and has committed high treason, by compassing her death, and levying war against her in the realm. Of brothels, so of meeting houses." "Let us hope," said Lord Campbell, "that the Lord Chief Justice was ashamed to feel himself obliged to talk such nonsense, although backed by the other judges, and that it was through his merciful interference that the prisoners, though found guilty, and sentenced to a cruel death, were reprieved and pardoned."—4 Camp. Chanc., 513.

A NICE POINT, AS TO WHETHER KILLING INCLUDES MAIMING.

Arundel Coke, Esq., a gentleman of fortune, in the county of Suffolk, and John Woodburne, his servant, were capitally indicted, on the Coventry Act, "for slitting the nose of Edward Crispe, Esq., Coke's brother-in-law, with intent to maim him and disfigure him. It appeared in evidence that Mrs. Coke was entitled to a large estate on the death of her brother, Mr. Crispe; that Mr. Coke, to get possession of this estate, resolved

to murder Mr. Crispe; that with this view, he inveigled Mr. Crispe at midnight into a churchyard; that then Woodburne, by Mr. Coke's orders, assaulted Mr. Crispe with a bill-hook, and gave him several wounds which were believed to be mortal; and he was left for dead in the churchyard; that he was nevertheless carried by some countrymen passing by to Mr. Coke's house, which was close by; that he recovered, and that one of the wounds he received was a cut across the nose. Now here there clearly was no intent that Mr. Crispe should live ridiculous with a mutilated visage; the intention was not to disfigure, but to murder him for his estate; the wound which merely cut the nose was intended, like others inflicted on different parts of his body, to be mortal, and both the accused persons, when they left him in the churchyard, believed that their real object had been fully accomplished. However, Lord Chief Justice King ruled that if the prisoners maliciously inflicted a wound which amounted to a slitting of the nose, and which disfigured the prosecutor, the case was within the Act, although the real object was to murder, not to disfigure. An intention to kill does not exclude an intention to disfigure. The instrument made use of in this attempt was a bill or hedging hook, which in its own nature is proper for cutting, maiming and disfiguring.

The prisoners were convicted and executed; but the case may be regarded as a pendant to that before Lord Chief Justice Sir James Mansfield, where a man who gave a horse a draught for the purpose of fraudulently winning a wager on a race, was hanged for killing the horse "out of malice to the owner," whose name he did not know.—State Trials.

ACCIDENT AND NEGLIGENCE DISTINGUISHED.

It is matter of experience, that there are many events dangerous to life and limb, which are wholly beyond human control, which no sagacity can foresee or provide against, and yet which constantly thwart human schemes, but which involve no blame whatever to any third person, and consequently ought not to involve any loss or

punishment. The ills that flesh is heir to are often wholly separable from any human culpability; or may be too subtle to attract the notice of the law. In such a case, each individual must submit, as if to an inevitable mischance. These two distinctions—one involving, and the other not involving, culpability, are usually known to the law under the head of negligence and of accident. If the act of one person is so closely connected with the suffering or loss of another that one is the immediate cause, and the other is the immediate consequence, then a liability of the former person to make good the loss of the latter person arises out of the circumstances. Why this should be, scarcely requires explanation. Human life abounds in dangerous situations, and if each were to act recklessly, few would be safe from wrong and injury. At the same time, if no connection of cause and effect between the two things can be traced, or if it be too far-fetched, or if no connection beyond what is inevitable and blameless can be discovered, then no such liability arises, and each must bear his own losses. The loss is then a mere accident, for which no remedy is provided to the one, because no culpability can be traced to the other. The difficulty of applying this rule arises from the infinite variety of circumstances and mutual relations to be examined and to be classified under the one head or the other: under blameable or actionable negligence, and under inevitable or blameless accident.—I Paterson's Lib. Subject, 247.

MY AUNT'S CASE

This celebrated case, decided by a judge of the County Courts soon after those courts were established, was as follows: The plaintiff sued the defendant for money due on an account stated. He proved his case and obtained judgment. Then the defendant pleaded that he could not pay, whereupon the court inquired whether there was any one connected with him, within the limits of the statute of distributions, who could pay. Upon the defendant replying that he had an old aunt who could pay well enough, only she did not like to do it, the

court held the aunt was liable, and made an order on her to pay accordingly. This admirable fusion and confusion of law, equity, and wild justice, made a profound impression on the legal profession; and it has ever since been known as a leading case under the above familiar name.

A BOAT RUNNING AWAY WITH AN ASS.

In 1546, a case in law was related to Luther. A miller had an ass which went into a fisherman's boat to drink. The boat, not being tied fast, floated away with the ass, so that the miller lost his ass, and the fisherman his boat. The miller complained that the fisherman's neglect to tie his boat fast, had lost him his ass. The fisherman complained of the miller for not keeping his ass at home, and desired satisfaction for losing his boat. Query, what is the law? Took the ass the boat away, or the boat the ass? Luther said both were in error, the fisherman that he tied not fast his boat, the miller in not keeping his ass at home.—Luther's Table Talk.

THE WIFE'S PARAPHERNALIA PLEDGED BY HER HUSBAND.

One of the nicest points which ever came before Lord Chancellor Hardwicke was, how a widow is affected by her husband, in his life-time, having pledged her paraphernalia. Lord Londonderry had given Lady Londonderry a diamond necklace, and afterwards pledged it as a collateral security for £1,000, with a power to sell it for £1,500. After his death, the question arose whether the necklace ought not to be redeemed out of his personal estate for her benefit.

The Lord Chancellor said: "The necklace is not to be considered as given for the separate use of the wife. I have admitted that a husband may make such a gift, but where he expressly gives jewels to a wife to be worn as ornaments of her person, they are to be considered only as paraphernalia, and it would be of bad consequence to consider them otherwise, for if they were a gift to her separate use, she might dispose of them absolutely in his life-time, which would be contrary to his intention. But

in this case it will be the same to Lady Londonderry if she can prove that she wore the necklace as an ornament of her person on birthdays and other public occasions, which it has been proved she did. The question arises, whether there was an alienation of it by the husband in his life-time, the husband having a right to alienate his wife's paraphernalia in his life-time, although he cannot deprive her of them by his will? Here there was a pledge with a power of sale; and at the husband's death the necklace remained unredeemed and unsold. I am of opinion that this was not an alienation, and that his personal estate being sufficient to redeem the pledge and pay all his debts, she shall be entitled to have it redeemed and delivered to her."

IF MERELY REPEATING A SLANDER IS A DEFENCE.

If it were held any defence, that one merely repeated the slander of another, the slandered person would in many cases have no remedy whatever, for the original utterer may be a pauper, or a prisoner, or a man of straw. The result, therefore, now is, that he who repeats a slander is equally liable with the originator, and cannot get quit of liability by naming the first utterer; nor though he stated it not as a volunteer, but in answer to a question. If, indeed, the repetition does not purport to be a statement of a fact, but rather to be for inquiry, no liability may be incurred. But the repetition of a slander is not even deemed the natural and immediate consequence of first uttering it, unless in very special circumstances. And the same remedy lies against the one who repeats, as against him who invents a slander or libel.—Paterson's Lib. Press, 184.

PROVING WHO WAS OWNER OF A LITTLE DOG.

After diligently searching the books, I find the report of only one judgment which Lord Chancellor More pronounced during his chancellorship, and this I shall give in the words of the reporter:

"It happened on a time that a beggar-woman's little dog, which she had lost, was presented for a jewel to

Lady More, and she had kept it some sen'night very carefully; but at last the beggar had notice where the dog was, and presently she came to complain to Sir Thomas, as he was sitting in his hall, that his lady withheld her dog from her. Presently my lady was sent for, and the dog brought with her, which Sir Thomas, taking in his hands, caused his wife, because she was the worthier person, to stand at the upper end of the hall, and the beggar at the lower end, and saying that he sat there to do every one justice, he had each of them call the dog, which when they did, the dog went presently to the beggar, forsaking my lady. When he saw this, he bade my lady be contented, for it was none of hers; yet she, repining at the sentence of my Lord Chancellor, agreed with the beggar, and gave her a piece of gold, which would well have bought three dogs, and so all parties were agreed; every one smiling to see his manner of inquiring out truth. It must be acknowledged that Solomon himself could not have heard and determined the case more wisely or equitably."—1 Camp. Chanc., 552.

LEGALITY OF SPRING-GUNS IN FIELDS AND GARDENS.

The doctrine of the common law justified the placing of spring-guns on this ground: that as the owner could not always be watching his fields in person, and so proportion force to force in extruding trespassers, he could only do so effectually in his absence by placing an instrument which, by the joint effect of terror and physical pain or death (the latter confessedly in excess of the requirements), would put a stop to the trespasses. The basis of all this seemed to be, that property, and not human life, must be protected at all hazards. The common law obviously could say nothing to extenuate the flagrant injustice of occasionally taking away the life of innocent persons without cause, and even of trespassers without adequate cause. And as the common law thus seemed to extenuate a species of impersonal assassination, at last the legislature, with higher views of the relative importance of life and property, had to intervene to cover over this conspicuous defect.

When the law as to spring-guns was about to be

altered, in 1825, the Lord Chancellor said that on every occasion that this question had come before courts of law, the judges had been about equally divided. Lord Ellenborough, C.J., opposing the Bill to render it illegal to set spring-guns, said the gardens near London principally owed their security to the engines that were set in them, and that gardeners had no other means of protecting them. After much discussion a statute passed, which drew a distinction between dwelling-houses on the one hand. and gardens, fields, and woods on the other; forbidding these guns generally as a misdemeanor, but allowing them in houses during the night.—I Paterson's Lib. Subject, 285.

IS A PERSON IN A BALLOON A TRESPASSER?

A good specimen of Lord Ellenborough's *nisi prius* manner is his opinion upon the question, whether a man, by nailing to his own wall a board which overhangs his neighbour's field, is liable to an action of trespass? The judge thus expressed his views of the law: "I do not think it is a trespass to interfere with the column of air superincumbent on the close of another. I once had occasion to rule, on the circuit, that a man who, from the outside of a field, discharged a gun into it, so that the shot must have struck the soil, was guilty of breaking and entering it. A very learned judge who went the circuit with me, having at first doubted the decision, afterwards approved of it, and I believe that it met with the general concurrence of those to whom it was mentioned. But I am by no means prepared to say, that firing across a field *in vacuo*, no part of the contents touching it, amounts to a *clausum fregit*. Nay, if this board commits a trespass by overhanging the plaintiff's field, the consequence is that an aeronaut is liable to an action of trespass at the suit of the occupier of every house and inch of ground over which his balloon passes in the course of his voyage. Whether the action lies or not cannot depend upon the length of time for which the superincumbent air is invaded. If any damage arises from the overhanging substance, the remedy is by an action on the case.

FOX HUNTERS NOT PRIVILEGED TO TRESPASS.

An action being brought by the Earl of Essex against the Honourable and Reverend Mr. Capel, which charged that the defendant had committed a trespass in breaking and entering his grounds, called Cashiobury Park, and with horses and hounds destroying the grass and herbage, and breaking down his fences; the defendant justified that the fox being a noxious animal and liable to do mischief, he, for the purpose of killing and destroying it, and as the most effectual means of doing so, broke and entered the park with horses and hounds, and hunted the fox. The replication to this was, that his object was not to destroy the fox, but the amusement and diversion afforded by the chase. Lord Ellenborough said: "This is contending against all nature and conviction. Can it be supposed that these gentlemen hunted for the purpose of killing vermin, and not for their own diversion? Can the jury be desired to say, upon their oaths, that the defendant was actuated by any other motive than a desire to enjoy the pleasures of the chase? The defendant says that he has not committed the trespass for the sake of the diversion of the chase, but as the only effectual way of killing and destroying the fox. Now, can any man of common sense hesitate in saying that the principal motive was not the killing vermin, but the sport? It is a sport the law of the land will not justify, without the consent of the owner of the land, and I cannot make a new law accommodated to the pleasures and amusements of these gentlemen. They may destroy such noxious animals as are injurious to the commonwealth, but the good of the public must be the governing motive." So the fox-hunter lost his case.

WHETHER SERVANTS MAY BE STRUCK BY MASTERS.

Though the general rule is, that a blow for a word is not to be allowed, yet it is singular that, as between master and servant, the notion has long been countenanced, that a master is at liberty to give emphasis to his views, feelings, and commands by supplementing them with a blow, or even with many. Such a notion,

no doubt has come down from before the dark ages, when slaves could be kicked and beaten at the master's or owner's discretion; and though personal service is now a free contract, yet the ancient taint is not wholly obliterated. Cato, the censor, after a dinner-party, used to correct with leathern thongs those slaves who had been inattentive, or had suffered anything to spoil. And our own law for many centuries back has been too indulgent in its practice towards masters in this respect. It seems that in the time of Henry VIII. it was thought legitimate, and a matter of course, for lords and masters to strike their servants with their hands or fists, and any small staff or stick, for correction and punishment; and this was expressly saved out of the category of murders and offences done within the King's household. And in the time of James I., when stabbing was made felony, it was thought necessary to save from the statute those who, in chastising children and servants, chanced to commit manslaughter. Hale says, the law allowed a master to use moderate correction. Holt, C.J., says more than once, that a master has the right to strike his servant by way of correction. And Lord Raymond, C.J., said the master might correct a servant in a reasonable manner for a fault. All that Blackstone says is, that a master may correct his apprentice for negligence or misbehaviour. But notwithstanding all these dicta and assumptions, which are the reflection of more coarse and barbarous habits, nothing seems more clear than that the contract of service in the present day gives no such implied authority to one party to enforce his views by breaking the peace. It is true that when provocation is listened to as an excuse, the provocation of masters must have some weight; but this at best can be an uncertain resource, seeing that every class of mankind have about equal provocations to tempt them to acts of violence.—
1 Paterson's Lib. Subject, 300.

A YOUNG LADY'S EXECUTOR SUING FOR A BREACH OF PROMISE TO HER.

In a case before Lord Ellenborough, the curious question arose, whether the personal representative of a young

lady who had died, being forsaken by her lover, who had promised to marry her, could maintain an action against him for breach of the promise to marry. The plaintiff at first recovered a verdict with large damages, but a motion was made in arrest of judgment to reverse this result.

Lord Ellenborough said: "This action is novel in its kind, and not one instance is cited or suggested in the argument of its having been maintained, nor have we been able to discover any by our own researches and inquiries; and yet frequent occasion must have occurred for bringing such an action. However, that would not be a decisive ground of objection if, on reason and principle, it could be strictly maintained. The general rule of law is *actio personalis moritur cum personâ*; under which rule are included all actions for injuries merely personal. Executors and administrators are the representatives of the temporal property, that is, the goods and debts of the deceased, but not of their wrongs, except where those wrongs operate to the temporal injury of their personal estate. Although marriage may be considered as a temporal advantage to the party, as far as respects personal comfort; still, it cannot be considered in this case as an increase of the transmissible personal estate, but would operate rather as an extinction of it. We are of opinion that this judgment may be arrested, and that the young lady's executor cannot receive damages for breach of such a promise."

DOING WHAT I LIKE WITH MY OWN.

Crossing Hampstead Heath, Erskine saw a ruffianly driver most unmercifully pummelling a miserable, bare-boned pack-horse, and, remonstrating with him, received this answer: "Why, it's my own; mayn't I use it as I please?" As the fellow spoke he discharged a fresh shower of blows on the raw back of his beast. Erskine, much irritated by this brutality, laid two or three sharp strokes of his walking-stick over the shoulders of the cowardly offender, who, crouching and grumbling, asked him what business he had to touch him with his stick. "Why," replied Erskine, "my stick is my own; mayn't I use it as I please?"

THE RIGHT OF CHANGING ONE'S NAME.

There is no ceremony or legal act required in order to effect a change of name, except only the declaration of a settled purpose, and the adoption of some means of making it known. Any mode of telling one's neighbours, and the public, that a new name has been and is intended to be adopted and recognised, is sufficient to constitute a change of name, and no deed need be executed, and no royal license or Act of Parliament need be obtained for this purpose. These are only at best another means of publicity, and nothing more. Lord Eldon said the King's license is nothing more than permission to take the name, but does not give it; and that a man taking such new name may take a legacy if left to him under the old name. And Tindal, C.J., said, "The royal sign manual is a mode which persons often have recourse to, because it gives a greater sanction to it, and makes it more notorious; but a man may, if he pleases, and if it is not for any fraudulent purpose, take a name, and work his way in the world with his new name as well as he can." And hence there was no real necessity for any person to apply for a royal sign manual to change the name. And Lord Tenterden said that a name assumed by the voluntary act of a young man at his outset into life, adopted by all who knew him, and by which he is constantly called, becomes, for all purposes, as much and effectually his name, as if he had obtained an Act of Parliament to confer it upon him. The general use and habit is everything, when the true name of a person at a particular time is required.

The Roman law was severe in case of a person who assumed a false name, for he was guilty of forgery (*falsum*), the punishment for which was banishment or crucifixion. In Lucca a person was fined for changing his name, and in case of non-payment his tongue was cut off. Pope Pius II. put to the rack Platina for instigating changes in people's names.—I Paterson's Lib. Subject, 432.

PUFFING AT AUCTIONS.

Lord Mansfield had the credit of putting down the practice of puffing at auctions, namely, where the owner,

by himself or his agent, secretly bids for the goods sold. He said, "The practice is a fraud upon the sale and upon the public. I cannot listen to the argument that it is a common practice. Gaming, stock-jobbing, and swindling, are all very common, but the law forbids them all. The very nature of a sale by auction is, that the goods shall go to the highest real bidder. The owner violates his contract with the public if, by himself or his agent, he bids upon his goods, and no subsequent bidder is bound to take the goods at the price at which they are knocked down to him."

Lord Kenyon followed the same rule, and it has ever since been acted on. But if the conditions of sale specify it, the owner may expressly reserve the power of making a bid by his agent.

ACTIONS BROUGHT UPON BETS.

Lord Campbell says that the legislature has at last laid down the rule that no action can be brought on a wager. But before that statutory rule, actions used to be allowed, and Lord Mansfield tried several. One was where two spendthrift heirs of peers wagered which of their fathers would die first, and the verdict was given for Lord March. Another famous case was, whether the Chevalier D'Eon, who was of effeminate appearance, though a military officer, was a man or a woman. Lord Mansfield tried it out, and a verdict was given that he was a woman. Although the verdict was afterwards set aside on legal grounds, it was allowed to settle many other bets laid on the same question. The *Annual Register* for 1765 says, "By this decision no less a sum than £75,000 will remain in this country, which would otherwise have been transmitted to Paris. The Chevalier has left England declaring that she had no interest whatever in the policies opened on her sex." The Chevalier, then assuming female attire, remained in France, supported by a pension from the French government, for having been long a spy of Louis XV., till the breaking out of the Revolution, in 1790. He then came to England, and being in great distress, lived with a lady of reputation as her companion; but dying in 1810 was found on a *post mortem* examination to be a man.

DAMAGES IN ACTIONS OF CRIM. CON.

When actions used to be brought by injured husbands for criminal conversation with their wives, Lord Mansfield once laid down the law to a jury, that they were to consider the offence in a moral light only, and give no greater damages against a peer of the realm than against the meanest mechanic. This was brought to prominent notice in the action tried before that judge by Earl of Grosvenor against H.R.H. the Duke of Cumberland. Junius attacked this doctrine of the judge. Lord Campbell says the bad law of the judge was soon forgotten amid the ridicule excited by the correspondence of the lovers, which was published as produced at the trial. Horace Walpole said that except a few oaths in the lady's letters, the Royal Highness's letters were quite inferior to hers in grammar, spelling, and style, being those of a mere cabin-boy. One began: "Hear I am all by myself at see!"—2 Camp. Ch.JJ.s, 426.

A JUDGE EXAMINING A PARCHMENT WITH ZIGZAG
EDGE.

On the trial of an ejectment case an indenture was produced, but instead of having the edge of the parchment running zigzag in the usual way, seemed to be cut quite straight. Serjeant Hill, the great black-letter lawyer, took objection to such a deed, saying that it could not be received in evidence, and was null and void, for such a conveyance of real property must be by indenture, to which there must be two parties, and which must be executed in two corresponding parts, one by each party, and the sheet of parchment must be cut in a waving line, so as to fit to each other when put together. This last particular was thought to be a preventive of forgery. An indenture was so called, said the serjeant, because it was *instar dentium*, having edges of teeth. And the serjeant quoted the Year Books in support of his doctrine. Lord Mansfield called for the deed to be handed up to him, and holding it up to the light, and running his eye critically and sternly along it, said, "I am of opinion that this is not a straight mathematical line ;

therefore it does not come within the definition of *instar dentium* laid down by the serjeant. I think it is admissible. Let it therefore be read."

CAN A MAN BE HIS OWN GRANDFATHER?

In *Notes and Queries*, 2nd Ser., vol. v., a question is thus stated. There was a widow and her daughter-in-law, and a man and his son. The widow married the son, and the daughter the old man. The widow was therefore mother to her husband's father, consequently grandmother to her own husband. They had a son to whom she was great-grandmother. Now, as the son of a great-grandmother must be either a grandfather or great uncle, this boy was therefore his own grandfather. And this was actually the case with a boy at a school at Norwich.

Another correspondent says (*Ibid.*, p. 504) that the above, as stated, was unnecessarily complicated. It may be stated thus: A widower and his son marry. The father marries the daughter of a widow, and the son marries the young lady's mother, thereby becoming father to his own father, and consequently grandfather to his father's son, *i.e.*, himself.

A JUDGE ON THE RIGHTS OF WOMEN.

Chief Justice Lee, in 1737, stood up for the rights of women more strenuously than any English judge before or since his time. He had to decide whether a female may by law serve the office of parish sexton, and whether females were entitled to vote at the election of a sexton. John Olive and Sarah Bly were candidates for the office of sexton, in the parish of St. Botolph, in the city of London, and she had 169 male votes and 40 female. He had 174 male votes and 22 female votes. The case was argued in the King's Bench, and the Chief Justice said: "I am clearly of opinion that a woman may be sexton of a parish. Women have held much higher offices, and, indeed, almost all offices of the Kingdom, as Queen, Marshal, Great Chamberlain, Great Constable, Champion of England, Commissioner of Sewers, keeper of a prison, and returning officer for members of Parliament.

Moreover, it would be strange if a woman may fill the office and yet should be disqualified to vote for it. The election of members of Parliament and of coroners stands on special grounds. No woman has ever sat in Parliament or voted for members of Parliament, and we must presume that when the franchise was first created, it was confined to the male sex. But no such reason exists as to the office of sexton."

IF HE THAT HIRES AN ASS HIRES ITS SHADOW.

One day, Demosthenes, the first of Greek orators, was hissed by a public meeting of Athenians, and they would not hear him, whereupon he said he had only a short story to tell them. All then became silent, and he began thus: "A certain youth hired an ass in summertime to go from hence to Megæra. About noon, when the sun was very hot, and both he that hired the ass, and the owner, were desirous of sitting in the shade of the ass, they each thrust the other away. The owner argued that he lent out only the ass, but not the shadow. The hirer replied that since he had hired the ass, all that belonged to the ass was also his." At this point Demosthenes appeared as if he was going away, but the mob being now inclined to hear the story out, called him back and desired him to proceed. He then began with this retort: "How comes it to pass that you are desirous of hearing a story of the shadow of an ass, and refuse to give ear to matters of greater moment?" The orator then made his speech, and they all forgot about the story. And to this day this moot point has not been decided in any country.

TURNING TRESPASSERS OUT WITH HELP OF A CONSTABLE.

It frequently happens that the occupier of a house, in desiring to turn out an unwilling guest, visitor, or trespasser, calls to his assistance a constable. It is true that the constable in such a case is often requested, and if so, it is his duty to attend as a spectator, and on the ground that a breach of the peace is likely to be committed. He may, on request, assist in expelling the intruder; but in so acting the constable has no other or greater power than any other person acting at the occupier's request.

He may be a convenient witness in the event of future proceedings, but unless some breach of the peace occurs in his presence on the part of the intruder, the constable has no right to take such intruder into custody. By refusing to quit the premises, such intruder may render himself liable to a civil action, but he commits no crime by merely remaining longer and giving more trouble and annoyance than he ought to do. If, without being first struck, he strike the occupier, he may then be apprehended by the constable, and taken before a justice and charged with an assault. But until such wrong is committed, all that the constable can justifiably do is merely to assist the occupier in pushing out the intruder, using no more force than is necessary; and if the intruder's conduct is such as reasonably appears likely to lead to an immediate breach of the peace, the constable may then, and not before, apprehend such intruder for such conduct, and charge him with an assault, or the intruder may be bound over to keep the peace.—1 Paterson's Lib. Subject, 308.

HOW FAR A CRIME TO STEAL FROM HUNGER.

Lord Bacon, in his *Maxims*, adopted the opinion of Staundford, and asserted, without any qualification, that if one stole viands to satisfy his present hunger, this was not felony or larceny. It is true that Lord Hale denies that this is the law of England, because no such extreme necessity can exist, at least since the statutory provision for the poor; and because of the manifest insecurity of property, if any man might carry in his own breast a dispensation from the law of property by alleging a necessity, of which, he says, none but the party himself can judge. But it has been well remarked, that this last reason loses its weight when one reflects that the reality of the necessity is a question of fact, as easily proved as other facts generally are proved. And though the view taken by Hale is the only satisfactory principle to act upon, yet judges naturally are careful as to the punishment in such cases, and use as much moderation as is compatible with enforcing the general rule.—2 Paterson's Lib. Subject, 25.

THE SENSIBLE AND HUMANE JUDGE.

Mr. Justice Rooke was trying a little girl who had, from the pressure of want, committed a small theft. The jury convicted her with great reluctance. The judge, while applauding their sense of justice in finding such a verdict, yet declared that he sympathised with them in their reluctance, and therefore he would inflict the mildest punishment allowed by the law. He accordingly fined her one shilling, and added that "if she had not got such a coin in her pocket, he would give her one for the purpose."

STEALING THINGS AFFIXED TO THE FREEHOLD.

Justices at Quarter Sessions are often fond of making a parade of their legal learning, and when a prisoner's counsel defending thieves raise the point, that the thing stolen is part of the freehold, the justices may be easily misled by their own ingenuity. Lord Campbell, in his Autobiography, says: "I heard that this doctrine was acted upon in a remarkable case by the Justices of the Worcestershire Sessions. A man was tried before them for stealing horsehair. It appeared that he went into a stable one night, and cut off a horse's long, bushy tail, which he sold for the hair, but that the horse at the time was tied to the manger by a halter. The court held that the hair, at the time of the severance, was affixed to the freehold, and directed an acquittal. I cited this case *ex relatione* in Westminster Hall, when the question arose, whether a barge moored to a wharf in the river Thames might be distrained for rent by the landlord of the wharf?"—*L. Camp. Life*, 258.

HOW THEY MARRIED AT GRETNA GREEN.

In 1827, when Mr. Edward Gibbon Wakefield was tried at Lancaster for the abduction of Ellen Turner, and marrying her at Gretna Green, David Laing, the village blacksmith, gave evidence as follows:

"What did you do when these two gentlemen and one lady sent for you?" "Why, I joined them, and then

got the lady's address, where she came from, and the party's, I believe." "What did they do then?" "Why, the gentlemen wrote down the names, and the lady gave way to it." "In fact, you married them after the usual way?" "Yes, yes, I married them after the Scotch form, that is, by putting on the ring on the lady's finger, and that way." "Were they both agreeable?" "Oh, yes; I joined their hands as man and wife." "Was that the whole ceremony?" "I wished them well, shook hands with them, and, as I said, they then both embraced each other very agreeably." "What else did you do?" "I think I told the lady that I generally had a present from 'em, as it be, of such a thing as money to buy a pair of gloves, and she gave me with her own hand a £20 Bank of England note to buy them." "Where did she get the note?" "How do I know?" "What did the gentleman say to you?" "He did nothing to me, but I did to him what I have done to many before, that is, you must know, to join them together, join hands, and so on. I bargained many in that way, and she was perfectly agreeable, and made no objections." "Did the gentleman and lady converse freely with you?" "Oh, yes; he asked me what sort of wine they had at Linton's house, and I said they had three kinds with the best of *shumpine* (champagne). He asked me which I would take, and I said *shumpine*. And so, when they went into another room to dine, I finished the wine, and then off I came. I returned and saw them in the very best of comfortable spirits."

EDUCATION COMPULSORY WITH THE ANCIENTS.

In Athens, Solon ordered that all the children should be educated, and all should be taught to swim. The Spartans had the children educated in public, and taken altogether out of the parents' management, being treated as children of the state, rather than as children of the parents. Constantine ordered that all children of parents too poor to maintain them should be educated as well as fed. The Carthaginians, it is true, once made a law, that none should learn Greek; but this was because they supposed that language was resorted to for treason-

able purposes, and it was a law which was soon neglected. The Incas of Peru had a maxim of government, that the children of the common people should not learn the sciences, which should be known only by the nobles, lest the lower classes should become proud, and endanger the commonwealth. Nevertheless, it was also their law, that every child should be taught the common arts necessary to maintain human life. And in China all poor children were taught, and masters found for them at the public expense. Xenophon praised the Persians for the great care they took in educating their children, so as to prevent the commission of crime, for this was much better than punishing them after crimes were committed. And Minos of Crete took heed that all the children should be educated, not forgetting the Pyrrhic dance. The feudal and slavish notions of modern countries for many centuries seem to have been adverse to all kinds of education among the lower classes. And in the time of Richard II. the barons petitioned the King, that no villein should be allowed to send his son to school.

Though it requires only a few words to say that all children shall be educated, if not voluntarily, then compulsorily, yet the mode of practically accomplishing this object involves an elaborate machinery resembling, in some respects, that which is required in order to give effect to the simple declaration, that no person shall be starved to death. The poor laws are designed to provide a mode of securing all persons against starvation; and in like manner the education laws provide against any children being allowed to grow up in utter ignorance.—2 Paterson's Lib. Subject, 345.

COUNSEL'S BARGAIN WITH HIS PUPIL TO PAY HIS FEE.

Protagoras, the ancient Greek sophist, took as a pupil, Enathlus, to teach him eloquence and the art of pleading causes. The terms were, half of the fee to be paid down, and the other half on the first day he gained a case. The pupil remained a long time learning, and, it was thought, protracted his going into business, in order to avoid paying the moiety of the fee, so that Protagoras

had to sue him for the money. When the case came on, Protagoras exclaimed, "You act most absurdly, young man, because in either case you must pay me. If the judges decide against you, you must pay, and if they decide for you, you must pay, because you will then have gained your case." "Not at all," retorted the pupil; "either way, it is I that must win. If the judges are for me, I will not have to pay; and if they are against me, I will not have to pay, for this last was the very bargain between us, namely, if I did not win my case." The judges were greatly puzzled with this case, which seemed to them inexplicable, and Aulus Gellius says they could not see their way to any decision, and resorted to the device of adjourning their decision to a very distant day; probably to the Greek calends, and it has never since been decided.

NUISANCE IN MONOPOLISING THE STREET.

In 1805, Mr. Russell, the great Exeter carrier, was brought up to the Court of King's Bench, to receive judgment for suffering his broad wheel waggons to remain for whole days in the public streets of Exeter, to the great interruption of the inhabitants, etc. Mr. Russell contended manfully against the corporation of Exeter, and claimed an almost prescriptive right to load his waggons in the streets, saying that his predecessors had done so for fifty years past. Lord Ellenborough, however, laid down a different doctrine, and told Mr. Russell he must consider that the street was not to be used as his own private property. Mr. Justice Gross likewise hoped it would be an example to persons in other towns, and in the metropolis, that they were not to suffer nuisances of this nature. After some consultation the court directed that the defendant should enter into a recognizance to appear and receive judgment whenever called upon, and discharged him with a caution to avoid such practices in future.

LOSING A POCKET-BOOK IN A HOTEL.

In 1809, Mr. Jones, a rider, arrived at Wrexham Inn, and the place being full, had to sleep in a three-bedded

room, the two other beds being occupied by the landlord's family. When Jones awoke next morning, he missed a pocket-book containing £400 in bank notes, which, though he had been drinking, he recollected was in his waistcoat, which he placed in a chair at his bed-side, the night before. On discovering his loss, he roused the whole family, and all searched in vain, the landlord and his wife being resolved to make a thorough examination, for which they called a constable to assist. The book not being found, Jones sued the landlord, who brought forward all his family and servants, and one and all denied ever seeing or touching the book. The jury found a verdict for the plaintiff, £400. Some weeks afterwards the landlord fell into difficulties, and his goods were sold by auction; the auctioneer, on selling this bed, whetting the curiosity of the audience by describing it as the bed on which the young man slept who lost the £400. The purchaser of the lot was astonished on raising the feather bed to find, between two old mattresses underneath, the identical pocket-book. It was suggested that the half drunken man, with the cunning appropriate to that state of mind and body, had put it between the mattresses and forgotten all about it. But the Chief Baron thought that the real thief might have put it there, after discovering that he would probably be detected.

A JUDGE DRINKING ON THE BENCH.

O'Connell said that an Irish judge, Boyd, was a drunkard. He was so fond of brandy that he always kept a supply of it in court upon the desk before him, in an ink-stand of peculiar make. His lordship used to lean his arm upon the desk, bob down his head, and steal a hurried sip from time to time, through a quill that lay among the pens, which manœuvre he flattered himself escaped observation. One day this judge presided at a trial where a witness was charged with being intoxicated at the time he was speaking about. Mr. Harry Grady laboured hard to show that the man had been sober. Judge Boyd at once interposed and said: "Come now, my good man, it is a very important consideration; tell the court truly, were you drunk or were you sober upon that occasion?" "Oh,

quite sober, my lord." Grady added, with a significant look at the *ink-stand*, "As sober as a judge!"—O'Connell's Life.

COMPACT BETWEEN DRUNKEN COUNSEL AND SOLICITOR.

The Irish counsel were formerly eminent for their jolly carousing. Once, about 1687, a heavy argument coming on before Lord Chancellor Fitton, Mr. Nagle, the solicitor, retained Sir Toby, who entered into a bargain that he would not drink a drop of wine while the cause was at hearing. This bargain reached the ears of the Chancellor, who asked if it was true that such a compact had been made. Sir Toby said it was true, and the bargain had been rigidly kept; but on further inquiry Sir Toby admitted that as he had only promised not to *drink a drop* of wine, he felt he must have some stimulant. So he got a basin, into which he poured two bottles of claret, and then got two hot rolls of bread, sopped them in the claret, and *ate* them. "I see," replied the Chancellor; "in truth, Sir Theobald, you deserve to be *master of the rolls!*"—O'Flanagan's Ir. Chanc., 471.

DRUNKENNESS AND ITS ANCIENT PUNISHMENT.

Amid the great variety of treatment to which drunkenness was subjected by the ancients, all lawgivers seem to agree in treating drunkenness as a state of disgrace; and since it is brought on deliberately, it is still more odious, and without excuse. Whatever individuals may think and say, no nation treats it as meritorious. Yet Darius is said to have ordered it to be stated in his epitaph that he could drink a great deal of wine, and bear it well—a virtue which, Demosthenes observed, was only the virtue of a sponge. At the Greek festival of Dionysia, it was a crime not to be drunk, this being a symptom of ingratitude to the god of wine, and prizes were awarded to those who became drunk most quickly. And the Roman bacchantes, decked with garlands of ivy, and amid deafening drums and cymbals, were equally applauded; but at length, even the Bacchanalia were suppressed by a decree of the senate, about 186 B.C.

Notwithstanding these exceptions, the offence of drun-

kenness was a source of great perplexity to the ancients, who tried nearly every possible way of dealing with it. If none succeeded, probably it was because they did not begin early enough, by intercepting some of the ways and means by which the insidious vice is incited and propagated.

Severe treatment was often tried to little effect. The Mosaic law seems to have imposed stoning to death as a fit punishment, at least if the drunkenness was coupled with any disobedience of parents. The Locrians, under Zaleucus, made it a capital offence to drink wine, if it was not mixed with water; even an invalid was not exempted from punishment, unless by order of a physician. Pittacus, of Mitylene, made a law that he who, when drunk, committed an offence, should suffer double the punishment which he would do if sober; and Plato, Aristotle, and Plutarch applauded this as the height of wisdom. The Roman censors could expel a senator for being drunk, and take away his horse. Mahomet ordered drunkards to be bastinadoed with eighty blows.

Other nations thought of limiting the quantity to be drunk at one time, or at one sitting. The Egyptians put some limit, though what it was is not stated. The Spartans also had some limit. The Arabians fixed the quantity at twelve glasses a man; but the size of glass was unfortunately not clearly defined by the historians. The Anglo-Saxons went no further than to order silver nails to be fixed on the side of drinking cups, so that each might know his proper measure. And it is said that this was done by King Edgar, after noticing the drunken habits of the Danes. Lycurgus, of Thrace, went to the root of the matter, by ordering the vines to be cut down. And his conduct was imitated in 704, by Terbulus, of Bulgaria. The Suevi prohibited wine to be imported. And the Spartans tried to turn the vice into contempt by systematically making their slaves drunk once a year, to show their children how foolish and contemptible men looked in that state.

Drunkenness was deemed much more vicious in some classes of persons than in others. The ancient Indians held it lawful to kill a king, when he was drunk. The Athenians made it a capital offence for a magistrate to be

drunk, and Charlemagne imitated this by a law, that judges on the bench and pleaders should do their business fasting. The Carthaginians prohibited magistrates, governors, soldiers, and servants, from any drinking.

In England, since 1872, no punishment is assigned to mere drunkenness, unless it is exhibited in a highway or public place, or on licensed premises. And it is only when a person is drunk and acting riotously, or driving, that he can be apprehended in such public places. For mere drunkenness in a public place, or in licensed premises, he cannot be imprisoned if he pays the fine assigned; though he may be imprisoned without a fine, if he is found drunk and riotous, or disorderly, or drunk while driving a vehicle or cattle. And this law extends to all parts of the kingdom, though under Local Improvement Acts, Harbour Acts, and other special legislation as to railways, ships, docks, and employments, stronger powers of interference are also sometimes given for arresting and punishing those found drunk within defined localities.—2 Paterson's Lib. Subject, 419.

HIGHWAYMEN IN PARTNERSHIP.

One highwayman once filed a bill in equity against the other coadjutor, in order to compel an account. He carefully avoided in his bill saying what the nature of their partnership was, except a *dealing* in necessaries, such as horses, saddles, gold watches, rings, swords, etc., at Blackheath, Finchley, and other places, and he claimed £2,000 and upwards. The bill was referred to the master for scandal and impertinence, and the solicitors were attached and fined, while the counsel who signed the bill were directed to pay the costs.

THE BIRTHDAY OF A CHILD BORN AT MIDNIGHT.

The following case is said to have been submitted to counsel, and is mentioned by Mr. Coventry, in his "Conveyancers' Evidence." We can fancy how long and protracted the arguments in court would have been. The point was, whether a young lady born on the night of the 4th of January, 1805, after the house clock had struck

twelve, and while the parish clock was striking, and before the clock of St. Paul's had struck, was born on the 4th or 5th of January. The opinion is stated to have been as follows: "This is a case of great importance and some novelty, but I do not think I should be much assisted in deciding it, by reference to the ponderous folios under which my shelves groan. The nature of the testimony is to be considered with reference to the subject to which it is applicable. The testimony of the houseclock is, I think, applicable only to domestic, mostly culinary, purposes. It is the guide of the cook with reference to the dinner hour, but it cannot be received as evidence of the birth of a child. The parochial clock is much better evidence, and I should think it ought to be received if there was no better; but it is not to be put in competition with the metropolitan clock; where that is present, it is to be received with implicit acquiescence, it speaks in a tone of authority, and it is unquestionably of great weight. I am therefore of opinion that Miss Emma G. was born on the 4th of January, 1805, and that she will attain her majority the instant St. Paul's clock strikes twelve on the night of the 3rd January, 1826."

LORD CHIEF JUSTICE HALE ON WITCHES.

Lord Hale went on in this style to a jury: "Gentlemen of the jury, I will not repeat the evidence unto you, lest by so doing I should wrong it on the one side or on the other. Only this I will acquaint you, that you have two things to enquire after; first, whether or no these children were bewitched? secondly, whether the prisoners at the bar were guilty of it? That there are such creatures as witches, I make no doubt at all, for, first, the Scriptures have affirmed so much; secondly, the wisdom of all nations hath provided laws against such persons, which is an argument of their confidence of such a crime; and such hath been the judgment of this kingdom, as appears by that Act of Parliament which hath provided punishments proportionable to the quality of the offence. I entreat you, gentlemen, strictly to examine the evidence which has been laid before you in this weighty case, and I earnestly

implore the Great God of Heaven to direct you to a right verdict. For to condemn the innocent and to let the guilty go free, are both an abomination unto the Lord."

The jury, having retired for half-an-hour, returned a verdict of guilty against both of the prisoners on all the indictments; and the judge, putting on his black cap, after expatiating upon the enormity of their offence, and declaring his entire satisfaction with the verdict, admonished them to repent, and sentenced them to die. The bewitched children immediately recovered their speech and their senses, and slept well that night. Next morning Sir Matthew, much pleased with his achievement, departed for Cambridge, leaving the two unhappy women for execution. They were eagerly pressed to confess, but they died with great constancy, protesting their innocence.—1 Camp. C.J.s, 566.

LEGALITY OF SUNDAY SPORTS AND GAMES.

The statute of Charles I. prohibited only bear-baitings and bull-baitings, common plays, or unlawful sports, on Sundays, and these had a definite and limited meaning. As regards theatres, these being all subject to regulations prescribed by the Lord Chamberlain and the justices of the peace, who can dictate their own conditions, performances are prohibited on Sundays and certain other days. The pursuit of game on Sundays is now expressly regulated by statute. A penalty of £5 is imposed on all persons who on Sundays or Christmas day either kill or take game, or use dogs, nets, or guns, or other engines for the purpose of killing or taking them. And setting a snare on Saturday night which remains in catching order on Sunday is an offence within this enactment. This prohibition, however, applies only to game strictly so called, and does not affect rabbits and snipe, and other birds of less degree. With regard to fishing on Sundays, the statutes are not so stringent. For while persons are prohibited from fishing for salmon on Sunday with nets or engines, those who angle only for such fish are not so prohibited. And as to other fish, there is no prohibition whatever as to the means or the kind of fish caught on that day.—Paterson's Lib. Press and Worship, 359.

SUNDAY OBSERVANCE BY DIFFERENT SECTS.

Howell, in his *Londinopolis*, says, that a Jew, in the reign of Henry III., having by accident fallen into a dirty ditch on his Sabbath, which was Saturday, would not suffer any one to take him out, though rather a necessary work. The Earl of Gloucester not only suffered the Jew to continue in this filthy condition on his own Sabbath, but would not permit any one to take him out on the Sunday, for that was the Sabbath of the Christians. The Jew, by this cruel joke, was suffocated, nor do the chroniclers of the time reflect on the barbarity of it.

OLD MODE OF SUNDAY OBSERVANCE BY BLOCKING
HIGHWAY.

In order to prevent the violation of the law, and to discourage the practice of traveling through the town of Abingdon in the time of divine service, the mayor of the corporation ordered a rope to be thrown across the principal street. When Lord Chancellor Macclesfield was about to pass on his journey, he found the proper officers at their post, who refused to lower the rope till the service was ended. Instead of resisting the order, Lord Macclesfield quietly descended from his carriage and entered the church, where he remained until the conclusion of the service, when he re-entered his carriage, and expressed his approbation of the regulation.—2 Law and Lawyers, 67.

COPYRIGHT—THE FIRST ACT.

About 1709 authors and publishers began grievously to complain of piracy, and the difficulty they had in tracing the wrong-doers, and recovering damages or stopping the mischief. And they petitioned Parliament for an Act to give them better remedies. And in 1709 an Act passed which recited, that “persons had of late reprinted books without the consent of the authors, to the very great detriment and too often to the ruin of them and their families.” This act caused afterwards great litigation, and, as authors discovered to their cost, caused

nothing less than confiscation of their property. "This was done," as Lord Lyndhurst, L.C., remarked, "by the introduction of one or two ill-considered words in the statute which was meant to be a benefit to literature, but turned out a fatal gift."

When Captain Bell, in 1646, "at great cost and pains discovered a manuscript of Luther's Table Talk marvelously preserved" and published his translation, the House of Commons magnanimously resolved, that he should have the sole disposal and benefit of printing it for fourteen years, and that none should print the same unless licensed by him. This crude resolution, which presented to a man his own property for fourteen years, probably gave the cue to the unknown author of the first Copyright Act of Anne.—Paterson's Lib. Press, 244.

COPYRIGHT IN PRIVATE LETTERS.

It will be seen how fallacious and confused is the notion, that there is a joint property in the letter between the writer and receiver, and that neither can do anything as regards it without the consent of the other. This arises from confounding the fate of the mere paper with the substantial thing which is the medium of communication. The correct rule seems to be that the paper belongs absolutely to the receiver, but the letter, or means of communication, belongs absolutely to the writer, subject only to the limited user of the contents for the receiver's personal benefit. At first the courts were not a little puzzled how to treat the mutual rights of those who sent and who received letters of a private nature.

Where the receivers of letters, or any other person, has, without the consent of the writer, published, or threatened to publish such letters, the latter may obtain an injunction from the court. It is true that the court seems to have granted this relief on the professed ground of there being a breach of trust, but it would be more correct to hold the act as a tort or violation of the owner's right to do what he pleases with his own letter or communication. There may, however, be sometimes

an express contract between writer and receiver, and the breach of that contract by the latter may be a ground also of the court interfering to restrain publication. There may also be cases in which the receiver of a letter may be entitled to use it, as already stated, for some purpose of vindication or self-defence, in which event the publication may be excused.—Paterson's Lib. Press, 270.

A VALUABLE COPYRIGHT IN A COUNSELLOR'S WORK.

Mr. Bethell, an Irish barrister at the time of the Union, like many of his brethren, published a pamphlet on that much vexed subject, the policy of the then proposed Union. Mr. Lysaght meeting him, said, "Bethell, you never told me you had published a pamphlet on the Union. The one I saw contained some of the best things I have ever seen in any of these productions." "I am proud you think so," rejoined the other eagerly. "Pray, what was the thing that pleased you so much?" "Why," replied Lysaght, "as I passed a pastry-cook's shop this morning, I saw a girl come out with three hot mincepies wrapped up in one of your productions!"

SEEKING ADVICE AGAINST PIRATES OF COPYRIGHT.

When Henry Erskine was a leader of the Scotch bar, he had a contemporary and rival barrister, Mr. Wright, who had originally been a shoemaker, but became in due time a self-taught advocate, and, having little business at the bar, composed a little treatise on mathematics, which was very successful. Sometime afterwards the *Encyclopædia Britannica* was published, and, among other subjects, treated of this small subject of his, and practically swallowed up words, lines, diagrams, and all the merits as he thought of his little book. The author, highly incensed, consulted his friend Erskine as to bringing an action of damages for invasion of copyright. Erskine, after hearing his complaint, said it was one thing to be right and another thing to get his right. That the publishers of the *Encyclopædia* were wealthy, and no doubt would defend to the last their ill-gotten gains.

An action might be begun, but nobody could tell when and where it would end. Besides, there were many other authors of little books, who were in the same predicament, and no doubt would be glad if he would fight their battles, and yet would not lift a finger to help him. His advice to Wright was therefore this: "Don't bring your action. But there is an admirable old law called the *lex talionis*. Go and publish a new edition of your mathematics and——" "What then?" eagerly exclaimed Wright. "Why," said Erskine, "publish your book, and take in the whole of the Encyclopædia as a quotation!" The mathematician was not satisfied with this advice, and took a grudge against his old friend, and never spoke to him again.

CHAPTER XII.

ABOUT WITNESSES AND JURYMEN.

WITNESSES NOT LIABLE FOR SLANDER.

A counsel or advocate conducting a cause in court is exempt from liability for comments and insinuations against third parties, if these are relevant. And allegations in course of the pleadings in suits or in the affidavits relating thereto, and by witnesses, are all privileged from action, even though malice is alleged against the witness. If the moment the witness swerves from the truth, an action were to lie against him at the suit of the party injured, this would be convicting a man of a crime of which he could not be convicted in a court of criminal jurisdiction without the concurring testimony of two. It might be different, indeed, if the process of the court were abused maliciously, and without reasonable or probable cause. The great object of the law is to allow witnesses to speak freely, without fear of consequences. Therefore, when a witness gave an answer which was not relevant, yet had reference to the inquiry, and was in supposed vindication of his own character, it was held not actionable as slander.—Paterson's Lib. of Press, 195.

A WITNESS STATING ONLY WHAT HE SAW.

A prisoner's counsel had at a trial several times told a witness, whose character was not high, that he must state nothing which did not pass in the presence of the prisoner. When the time for cross-examination arrived, witness was asked: "Pray, how often have you been transported?" The witness at once answered: "I must not tell that, for it was not in the presence of the prisoner."

JEFFREYS BROWBEATING WITNESSES.

Jeffreys, on one occasion, having examined a witness, who very frequently used the words "lessor and lessee," "assignor and assignee," at last exclaimed: "I question if you know what a lessor or lessee is, for all your formal evidence." "Yes, Sir George, I do," replied the witness; "and I give you this instance; if you nod at me, you are the nodder, and if I nod at you, you are the noddee."

On another occasion, one of the witnesses being called a fiddler, was much offended, and afterwards described himself as a "musicianer." Jeffreys asked him what was the difference between a musicianer and a fiddler. "As much, sir," replied the witness, "as there is between a pair of bagpipes and a recorder."

A witness with a long beard was giving evidence that was displeasing to Jeffreys, when judge, who said: "If your conscience is as large as your beard, you'll swear anything." The old man retorted: "My lord, if your lordship measures consciences by beards, your lordship has none at all."

It is related that Jeffreys, when at the bar, beginning to cross-examine a witness in a leathern doublet, who had made out a complete case against his client, bawled forth, "You fellow in the leathern doublet, pray what have you for swearing?" The man looked steadily at him, and "Truly, sir," said he, "if you have no more for lying than I have for swearing, you might wear a leathern doublet as well as I." This blunt reply got to the west end of the town, and was remembered among the courtiers against Jeffreys when he grew to be a great man.

COUNSEL GETTING RID OF AN ACTION FOR NUISANCE.

Scarlett was employed for the defence in an action for nuisance, brought by the plaintiff, and whose chief witness was a lady living near the alleged nuisance. Scarlett began the cross-examination of this lady by

inquiring tenderly about her domestic relations, her children, and their illnesses. The lady became very confidential, and appeared flattered by the kind interest taken in her. The judge interfered, and thought these matters were quite irrelevant. But Scarlett begged to be allowed to proceed, and on the conclusion of the cross-examination, he said: "My lord, I call no witnesses." He had shown on the witness's testimony, that she had brought up a numerous and healthy progeny in the vicinity of the alleged nuisance. The jury, amused as well as convinced, gave a verdict for the defendant.—L. Abinger's Mem.

CROSS-EXAMINING AN EXPERIENCED MOTHER OF THE PLAINTIFF.

Scarlett, in a breach of promise case (*Foot v. Green*), was for the defendant, who was supposed to have been cajoled into the engagement by the plaintiff's mother, afterwards the Countess of Harrington. The mother, as a witness, completely baffled Scarlett, who on behalf of the defendant cross-examined her; but by one of his happiest strokes of advocacy, he turned his failure into a success. "You saw, gentlemen of the jury, that I was but a child in her hands. What *must my client have been?*"

A WITNESS TOLD TO LOOK A JUDGE IN THE FACE.

On the trial of Glengarry, in Scotland, for murder in a duel, a lady of great beauty was called as a witness. She came into court veiled. But before administering the oath, Lord Eskgrove, the Scotch judge (to whom administering the oath belongs in Scotland), gave her this exposition of her duty. "Young woman, you will now consider yourself as in the presence of Almighty God, and of this High Court. Lift up your veil, throw off all your modesty, and look me in the face."—Cockburn's Mem., 122.

A WITNESS ASKED TO REPEAT THE VERY WORDS USED.

Mr. Garrow was examining a very young lady, who was a witness in an assault case, and he asked her if the

person who was assaulted did not give the defendant very ill language; if he did not call him a d——d Scotch cobbler, and utter other words so bad that he (the counsel) had not impudence enough to repeat. The lady replied, "Yes." "Will you, madam, be kind enough to tell the court what those words were?" "Why, sir," replied she, "if *you* have not impudence enough to speak them, how can you suppose that I have?"

A WITNESS GIVING EVIDENCE OF INDECENCIES.

A case involving indecent details was tried before Justice Maule, and the court was crowded with females, who had received a hint more than once to retire, but had taken no notice of it, and still sat eagerly listening. A witness being pressed to describe some details, looked round and hesitated very much to express what he knew. The judge seeing this reluctance, said to him: "Out with it! The ladies don't mind it, and you need not be afraid of me."

SHAKING A WITNESS'S CREDIT.

An Irish counsel, after vainly trying to shake a witness's credit by cross-examination, turned round sharply to the jury, exclaiming, "Would any of you swear now, that that fellow would not pick a pocket?"

ASKING WITNESS WHEN HE WAS LAST IN GAOL.

Mr. Baldwin was the counsel employed to oppose a person justifying bail in the Court of King's Bench. After some common questions, a waggish counsel sitting near suggested that the witness should be asked as to his having been a prisoner in Gloucester gaol. Mr. Baldwin thereon boldly asked: "When, sir, were you last in Gloucester gaol?" The witness, a respectable tradesman, with astonishment declared that he never was in a gaol in his life. Mr. Baldwin being foiled, after putting the question in various ways, turned round to his friendly prompter, and asked for what the man had been imprisoned. He was told that it was for suicide. Thereupon Mr. Baldwin, with great gravity and solemnity,

addressed the witness: "Now, sir, I ask you upon your oath, and remember that I shall have your words taken down, were you not imprisoned in Gloucester gaol for suicide?"

A WITNESS DESCRIBING HOW AN ACCIDENT HAPPENED.

An action was brought by the owner of a donkey which was forced against a wall by a waggon and killed. The driver of the donkey was the chief witness, and was much bullied by Mr. Raine, the defendant's counsel, so that he lost his head and was reprimanded by the judge for not giving direct answers, and looking the jury in the face. Mr. Raine had a powerful cast in his eye, which probably heightened the poor fellow's confusion; and he continued to deal very severely with the witness, reminding him again and again of the judge's caution, saying, "Hold up your head, man: look up, I say. Can't you hold up your head, fellow? Can't you look as I do?" The witness, with much simplicity, at once answered, "I can't, you squint." Serjeant Cockle, for the plaintiff, on re-examination, seeing gleams of the witness's recovery from his confusion, asked him to describe the position of the waggon and donkey. After much pressing at last he said, "Weel, my lord judge, I'll tell you as how it happened." Turning to Cockle, he said, "You'll suppose ye are the wall." "Aye, aye, just so, go on. I am the wall, very good." "Yes, sir, you are the wall." Then changing his position a little, he said, "I am the waggon." "Yes, very good; now proceed, you are the waggon," says the judge. The witness then looked to the judge, and hesitating at first, but with a low bow and a look of sudden despair, said, "And your lordship's the ass!"

A WITNESS ASKED WHAT HE CALLS THE WATER.

A plain countryman, who was most at home in tending cows and calling them home at dusk, was called to an assize in Norfolk to be a witness about a piece of land that was in controversy. The judge asked him, "What call you that water that runs on the south side of the close?" The fellow gravely answered, "My lord, our water comes without calling."

A WITNESS ASKED ON WHAT GROUND GOODS WERE
RETURNED.

A witness was examined at a trial of an action for the price of goods which were alleged by the defendant to have been returned as not according to sample. "Did you ever see the defendant return the oats?" "Yes, your honour." "*On what ground* did he refuse to accept them?" "In the *back yard*, your honour." (Much laughter.)

A WITNESS WHO WAS NOT BAPTIZED.

In a trial for highway robbery, at Lancaster, one Tonsong, a Chinese juggler, was called as a witness. Counsel asked, "Were you ever baptized?" "Oh, yes." "Where?" "Oh many times, all town I come to, I baptized." Justice Park: "Really, we must swear an interpreter." One was accordingly sworn, and who made the sign of the cross. Tonsong was again asked the question, and said: "Oh every place go through England." *Judge*. "Really, this is very distressing. If he were a pagan I would swear him according to the religion of his country. What am I to do?" *Mr. Coltman*, another counsel, then said, "I think, my lord, he must be considered as professing the religion of his forefathers, and he must be sworn as people are sworn in China. Let me try. Mr. Tonsong, where do you go when you die?" "I go in ground." "Where are your father and mother?" "They dead." "Aye, but where are they gone?" "I no know." "I am afraid, my lord, I can make nothing of him." The judge then desired Mr. Tonsong to leave the box, and his evidence was dispensed with.

AN IRISH WITNESS PREVARICATING.

Mr. O'Grady, the Irish barrister, was examining a foreign sailor at Cork assizes. "You are a Swede, I believe?" "No, I am not." "What are you then?" "I am a Dane." Grady turned to the jury, "Gentlemen, you hear the equivocating scoundrel. *Go down, sir!*"

A WITNESS DROPPING HIS H'S.

Scarlett had to cross-examine a witness whose evidence was important, and it was of great service to disconcert and confuse him. The witness appeared in the box, a portly, over-dressed gentleman, full of self-sufficiency. Counsel began: "Mr. John Tomkins, I believe?" "Yes." "You are a stockbroker?" "I *ham*!" Scarlett, after attentively scanning him for a few moments, looked round to the jury and bar and said, "And a very fine, well-dressed *ham* you are, sir!" This called forth great laughter, which seemed to succeed in frightening the witness.

RESTORING A WITNESS'S CHARACTER.

In 1841, a divorce case was tried in America, and a young woman named Abigail Bell was the chief witness of the adultery of the wife. Sumner, for the defence, cross-examined Abigail. "Are you married?" "No." "Have you children?" "No." "Have you a child?" Here there was a long pause. The question was repeated and another pause, and then at last the witness feebly replied, "Yes." Sumner sat down with an air of triumph. Rufus Choate was advocate for the husband, who claimed the divorce, and after enlarging on other things, said, "Gentlemen, Abigail Bell's evidence is before you." Raising himself proudly, he continued, "I solemnly assert there is not the shadow of a shade of doubt or suspicion on that evidence or on her character." Everybody looked surprised, and he went on: "What, though in an unguarded moment she may have trusted too much to the young man to whom she had pledged her untried affections; to whom she was to be wedded on the next Lord's day; and who was suddenly struck dead at her feet by a stroke of lightning out of the heavens!" This was delivered with such tragic effect that Choate, majestically pausing, saw the jury had taken the cue, and he went on triumphantly to the end. He afterwards told his friends that he had a right to make any supposition consistent with the witness's innocence.—Choate's Recollect.

A WITNESS FEIGNING MADNESS.

Dickens, in his *Memoirs of Grimaldi*, mentions a case of a dashing actor and clown named Bradbury, who, after playing with some popularity for a time, suddenly disappeared, and wrote a letter, dated from a mad-house at Hoxton, requesting his friend Grimaldi to call on him. It turned out that Bradbury was originally a man of fortune, and dining with some high friends, one of whom was a peer's son, a gold snuff-box of his was missing, which the peerling was vehemently suspected of stealing. A warrant was obtained to open the latter person's portmanteau, where the missing box was found, and an indictment for larceny followed. The friends of the peerling, however, bribed Bradbury, for an annuity, to get out of the way. The latter thereupon, by agreement, at the critical time of the trial, went mad and was sent to a mad-house and had his head shaved, and so became incapable of being a witness. As soon as the trial was over, and the prisoner was acquitted for want of evidence, Bradbury suddenly recovered his senses, and it was then he sent the message to Grimaldi, and related to him the cause of his mysterious and sudden withdrawal from the comic stage.

COUNSEL DISCONCERTING A WITNESS ABOUT HIS NECKTIE.

One of the fraternity of commercial travellers, having as a witness long baffled Erskine, the counsel examining him, he suddenly remarked, "You were born and bred in Manchester, I perceive?" The witness said he could not deny it. "I knew it," said Erskine carelessly, "from the absurd tie of your neckcloth." The travelling dandy's weak point was touched, for he had been dressing after Beau Brummel; and, his presence of mind being gone, he was made to unsay the greatest part of his evidence in chief.

A THICK-HEADED WITNESS.

On the trial of an action to recover the value of a quantity of whalebone, the defence turning on the quality of the article, a witness was called of impene-

trable stupidity, who could not be made to distinguish between the two well-known descriptions of this commodity, the "long" and the "thick." Still confounding thick whalebone with long, Erskine exclaimed, in seeming despair, "Why, man, you do not seem to know the difference between what is thick and what is long. Now, I tell you the difference. You are thick-headed, and you are not long-headed."

CONVICTING ON THE EVIDENCE OF ONE WITNESS.

Justice Aland told a country justice of Gloucestershire, on circuit, that a case had been lately argued at the King's Bench which it might be proper for a justice of the peace to know. A justice had convicted a man for killing a hare upon his own confession. The statute only said that he might be convicted on the oath of one witness, but said nothing about *confession*. Judge Eyre seemed to be of the opinion that the conviction was wrong: that judges were bound to keep to the very words of the statute. But all the other three judges were against him, and said that confession was the strongest evidence in the world: that the statute could never be intended to exclude that, and therefore the justice of the peace was quite right to convict him.

CONSTRUING TOO FAVOURABLY AN IRISH WITNESS.

Judge Foster, an Irish judge, was trying five prisoners for murder, and misunderstood the drift of the evidence. Four of the prisoners seem to have assisted, but a witness said as to the fifth, Denis Halligan, that it was he who gave the fatal blow: "My lord, I saw Denis Halligan (that's in the dock there), take a vacancy (the Irish word for *aim* at an unguarded part) at the poor soul that's kilt, and give him a wipe with a *clehalpin* (the Irish word for bludgeon), and lay him down as quiet as a child." They were found guilty. The judge, on sentencing the first four, gave them seven years' imprisonment. But when he came to Halligan, who really killed the deceased, the judge said, "Denis Halligan, I have purposely reserved the consideration of your case to

the last. Your crime is doubtless of a grievous nature, yet I cannot avoid taking into consideration the mitigating circumstances that attend it. By the evidence of the witness it clearly appears that *you* were the only one of the party who showed any mercy to the unfortunate deceased. You took him to a vacant seat, and you wiped him with a clean napkin, and you laid him down with the gentleness one shows to a little child. In consideration of these extenuating circumstances, which reflect some credit upon you, I shall inflict on you three weeks' imprisonment." So Denis Halligan got off by the judge mistaking a *vacancy* for a vacant seat, and a *clehalpin* for a clean napkin.

CROSS-EXAMINING THE LADY'S-MAID IN A CRIM.
CON. CASE.

Dunning was defending a gentleman in an action brought for criminal conversation with the plaintiff's wife. The chief witness for the plaintiff was the lady's-maid, a clever, self-composed person, who spoke confidently as to seeing the defendant in bed with her mistress. Dunning, on rising to cross-examine her, first made her take off her bonnet that they might have a good view of her face, but this did not discompose her, as she knew she was good-looking. He then arranged his brief, solemnly drew up his shirt sleeves, as if about to engage in some momentous battle. Dunning then began: "Are you sure it was not your master you saw in bed with your mistress?" "Perfectly sure." "What! do you pretend to say you can be certain when the head only appeared above the bed-clothes, and that enveloped in a night-cap?" "Quite certain." "You have often found occasion then to see your master in his night-cap?" "Yes; very frequently." "Now, young woman, I ask you on your solemn oath, does not your master occasionally go to bed with you?" "Oh, that trial does not come on to-day, Mr. Slabberchops!" A loud shout of laughter followed, and Lord Mansfield leaned back to enjoy it, and then gravely leant forward and asked if Mr. Dunning had any more questions to put to this witness. No answer was given, and none were put.

LEADING ON A VAIN-GLORIOUS WITNESS.

O'Connell used to tell this story of his friend, Harry Grady: I remember a good specimen of his skill in cross-examination, at an assizes at Tralee, when he defended some still-owners who had recently had a scuffle with five soldiers. The soldiers were witnesses against the still-owners. Harry Grady cross-examined each soldier in the following manner, out of hearing of the other soldiers, who were kept out of court. "Well, soldier, it was a murderous scuffle, wasn't it?" "Yes." "But *you* were not afraid?" "No." "Of course you weren't afraid. It is part of your sworn duty to die in the King's service, if needs must. But if *you* were not afraid, maybe, others were not quite so brave. Were any of your comrades frightened? Tell the truth now." "Why, indeed, sir, I can't say but they were." "Ah, I thought so; come now, name the men who were frightened—on your oath now." The soldier then named every one of his four comrades. He was sent down and another soldier called as a witness, to whom Grady addressed precisely the same set of queries, receiving precisely the same answers,—until, at last, he got each of the five soldiers to swear that *he alone* had fought the still-owners bravely, and that all his four comrades were cowards. Thus Harry succeeded in discrediting the soldiers' evidence against his clients.

A DIFFERENCE BETWEEN A BULL AND A BULLY.

At Worcester Assizes, a cause was tried as to the soundness of a horse, and a clergyman had been a witness, who gave rather a confused account of the transaction, and the matters he spoke to. A blustering counsel on the other side, after many attempts to get at the facts, said: "Pray, sir, do you know the difference between a horse and a cow?" "I acknowledge my ignorance," replied the clergyman. "I hardly know the difference between a horse and a cow, or between a bully and a bull. Only a bull, I am told, has horns, and a bully," bowing respectfully to the counsel, "*luckily for me has none.*"

AN IRISH WITNESS PROVING THAT LIFE WAS IN A
TESTATOR.

O'Connell was engaged in a will case, the allegation being that the will was a forgery. The subscribing witnesses swore that the will had been signed by the deceased "while life was in him,"—a mode of expression derived from the Irish language, and which peasants who have ceased to speak Irish still retain. The evidence was strong in favour of the will, when O'Connell was struck by the persistency of the man, who always repeated the same words, "The life was in him." O'Connell asked: "On the virtue of your oath, was he alive?" "By the virtue of my oath, the life was in him." "Now I call upon you in the presence of your Maker, who will one day pass sentence on you for this evidence, I solemnly ask—and answer me at your peril—was there not a live fly in the dead man's mouth when his hand was placed on the will?" The witness was taken aback at this question; he trembled, turned pale, and faltered out an abject confession that the counsellor was right; a fly had been introduced into the mouth of the dead man, to allow the witnesses to swear that "life was in him."

CROSS-EXAMINING AN IRISH WITNESS.

O'Connell thus cross-examined the principal witness in a fatal transaction, ending in a trial for murder, he being the defending counsel: "Were not you after taking a drop when this happened?" "Sartainly, I took a drop that day." "How much might the drop have consisted of—a glass?" "Yes, I drank a glass of spirits surely." "Maybe, if you recalled, you took a second?" "Why, I suppose I took as good as two." "Come, man, did not you take as good as three that day?" "I don't know, faix, maybe I did." "By virtue of your solemn oath, did not you drink a pint of whiskey before you saw these men a-fighting?" "I took my share of it." "Was it not all but the pewter?" "It was." The jury discredited his testimony, and the prisoner was acquitted.—O'Connell's Life.

MODE OF SWEARING A WITNESS.

Lord Erskine, during the Queen's trial, in 1820, related the following anecdote, to the great amusement of the House of Lords. "My lords, when I was counsel in a cause tried in the Court of King's Bench, an important witness called against me, without describing himself to be of any particular sect, so as to be entitled to indulgence, stated, that from certain ideas in his own mind, he could not swear according to the usual form of the oath; that he would hold up his hand and swear, but that he would not kiss the book. I have no difficulty in saying that I wished very much to get rid of that witness, and I asked what was the reason for refusing to be sworn in the usual form. He gave a reason, which seemed to me a very absurd one: 'Because it is written in the Revelations, that the angel standing on the sea, *held up his hand.*' I said, 'This does not apply to your case, for, in the first place, you are no angel; secondly, you cannot tell how the angel would have sworn if he had stood on dry ground, as you do.' Lord Kenyon sent into the Common Pleas, to consult Lord Chief Justice Eyre, who expressed himself of opinion, that although the witness was not of any particular sect, yet if there was a particular mode of swearing, most consistent with his feelings of the obligation of an oath, this mode ought to be adopted. So the witness was sworn in his own fashion. Whether he spoke the truth or not, unfortunately for my client, the witness was believed by the jury, and I felt that the judge was right, so that there was no ground for moving to set aside the verdict."—6 Camp. Chanc., 650.

THE EXECUTION OF A WILL IN PRESENCE OF WITNESSES.

Lord Chancellor Thurlow held, upon the "Statute of Frauds," which requires that a will of lands shall be subscribed by the witnesses in the presence of the testator, that a will was well executed where a lady, who made it, having signed it in an attorney's office, got into her carriage, and the carriage was accidentally backed by the coachman opposite to the window of the office, so that if she had been inclined, she might have let down the glass

of the carriage, and seen the witnesses subscribe the will.

But it is necessary that the testator should be in such a position as that, by possibility, he may have seen the witnesses sign the will if so disposed; although if he might see them from any one part of a room in which he was, and there be no evidence in what part of the room he was placed, it will be presumed that he was where he might have seen the witnesses.

SUBPŒNAING THE ARCHANGEL GABRIEL.

Jeremiah Mason, the American advocate, was defending a Methodist minister, by name Avery, on a charge of murder. The professional character of the minister interested all his brother ministers, and they crowded to the trial, the case being very serious in its aspects. Mason was absorbed in watching the evidence, taking notes, and tracing the effect on the jury. One of the ministers being a spiritualist, walked up to Mason in great agitation, and half confidentially said: "Mr. Mason, Mr. Mason, I have most important matter to communicate. The Archangel Gabriel came to my bedside this morning, and told me that brother Avery was innocent!" Mason, without lifting his eye from his papers, said, "Let him be subpœnaed immediately," and continued at his work.

CROSS-EXAMINATION OF MR. WELLER BY SERJEANT BUZFUZ.

In the case of *Bardell v. Pickwick*, Mr. Samuel Weller, though called by Mr. Serjeant Buzfuz as the plaintiff's witness, was treated as a hostile witness, and his examination was in reality a cross-examination. Part of it was as follows: "I believe you are in the service of Mr. Pickwick, the defendant in this case. Speak up, if you please, Mr. Weller." "I mean to speak up, sir," replied Sam. "I am in the service o' that 'ere gent'man, and a werry good service it is." "Little to do, and plenty to get, I suppose?" said Serjeant Buzfuz, with jocularly. "Oh, quite enough to get, sir, as the soldier said, ven they ordered him three hundred and fifty lashes," replied Sam.

"You must not tell us what the soldier, or any other man said, sir," interposed the judge; "it's not evidence." "Werry good, my lord," replied Sam. "Do you recollect anything particular happening on the morning when you were first engaged, eh, Mr. Weller?" said Serjeant Buzfuz. "Yes, I do, sir," replied Sam. "Have the goodness to tell the jury what it was." "I had a reg'lar new fit out of clothes that mornin', gen'l'men of the jury," said Sam; "and that was a werry partickler and uncommon circumstance with me in those days." Hereupon there was a general laugh; and the little judge looking with an angry countenance over his desk, said, "You had better be careful, sir." "So Mr. Pickwick said at the time, my lord," replied Sam, "and I was werry careful o' that 'ere suit o' clothes: werry careful indeed, my lord." The judge looked sternly at Sam for full two minutes, but Sam's features were so perfectly calm and serene, that he said nothing, and motioned Serjeant Buzfuz to proceed. "Do you mean to tell me, Mr. Weller," said Serjeant Buzfuz, folding his arms emphatically, and turning half round to the jury, as if in mute assurance that he would bother the witness yet, "do you mean to tell me, Mr. Weller, that you saw nothing of this fainting on the part of the plaintiff in the arms of the defendant, which you have heard described by the witnesses?" "Certainly not," replied Sam, "I was in the passage till they called me up, and then the old lady was not there." "Now attend, Mr. Weller," said Serjeant Buzfuz, dipping a large pen into the inkstand before him, for the purpose of frightening Sam with a show of taking down his answer, "You were in the passage and yet saw nothing of what was going forward! Have you a pair of eyes, Mr. Weller?" "Yes, I have a pair of eyes," replied Sam, "and that's just it. If they wos a pair o' patent double million magnifyin' gas microscopes of hextra power, p'raps I might be able to see through a flight of stairs and a deal door; but bein' only eyes, you see, my wision's limited." At this answer, which was delivered without the slightest appearance of irritation, and with the most complete simplicity and equanimity of manner, the spectators tittered, the little judge smiled, and Serjeant Buzfuz looked particularly foolish.

CROSS-EXAMINATION OF SAILOR AS TO MURDER AT SEA.

A very extraordinary criminal case was entirely decided by the knowledge that Adolphus, the Old Bailey counsel, had picked up of nautical affairs, in his early voyages to and from the West Indies. Two Lascars were on their trial for the murder of the captain of a ship. The evidence of the mate seemed quite conclusive. In the course of it he said, however, that at the time of the murder there was great confusion, as the ship was in much peril, and requiring all the attention of the sailors to prevent her striking on a rock. Adolphus, who defended the prisoners, asked so many questions as to the exact number of the crew, and where each man was, and what he was engaged in, during this perilous time, that at last the judge whispered, "I suppose, Mr. Adolphus, these questions are to the purpose? I own I do not see it," thinking, doubtless, the time of the court was wasted. After a few more questions as to the special duty each man was performing, the witness had accounted for every man on board, the captain being below, and the prisoners murdering him. Adolphus fixed his eyes steadily on the witness, and said, in a searching and loud tone, "Then who was at the helm?" The wretched mate dropped down in a fit, and soon after confessed he was himself the murderer. In his false evidence he had given to each man his position, and forgotten the most material, or rather left none to fill it. Nothing but a perfect knowledge of the requirements of a vessel in this dangerous position could have saved these unfortunate men. A barrister should have more general knowledge than is required for any other profession, he never can tell when it may be usefully brought to bear, as this case I have mentioned proves.—Adolphus, Mem., 157.

CROSS-EXAMINING AS TO PEOPLE'S NOSE AND EYES.

Dunning, in cross-examining an old woman, and trying to shake her evidence as to the identification of a party, put the following questions: "Pray, my good woman, are you very well acquainted with the plaintiff?" "Oh, yes, your worship, very well indeed." "Come now, what sized man is he, short or tall?" "Quite short and stumpy, sir;

almost as small as your honour." "Humph, what sort of a nose has he?" "What I should call a snubby nose, sir; much such a one for all the world as your own, sir: only not quite so cocked up like." "Hem! his eyes?" "Why, he has a kind of a cast in them, sir, a sort of squint. They are very like your honour's eyes." "You may go down, woman."

SKILL AT WHIST AS A TEST OF SANITY.

In a Scotch Court, an allegation of lunacy was made, and the advocate, who defended the alleged lunatic, was cross-examining Professor Gregory as to the state of the lunatic's mind, and that witness, in his examination, had admitted that the lunatic was a skillful whist player. The advocate proceeded: "And do you seriously mean, Dr. Gregory, to tell the jury, that a person who has a capacity for excelling in a game so difficult, and which requires memory, judgment, and combination—do you mean to assert that that man is deranged in his mind?" The professor replied, "I am no card player, but I have read in history that cards were invented for the amusement of an insane king!"

WITNESS CLAIMING RELATIONSHIP WITH COUNSEL.

Jack Lee, a noted counsel on the Northern Circuit, was cross-examining a witness and bullying him very much. The witness, who was clothed in rags, said, "Sir, you treat me very harshly, and I feel it the more because we are relations." "We relations!" said Lee, "how do you make out that?" "Why," said the witness, "my mother was such a person, and she was the daughter of such a man, and he the son of such a woman, who was the daughter of such a person, (naming them all), who was your great great grandfather." "Well," said Lee, "you are right; he was so. But then, my good fourth, fifth, or tenth cousin, speak a little truth, I beseech you, for the honour of the family, for not one word of truth, cousin, hast thou spoken yet!"

A JUDGE ALWAYS AGAINST THE HORSE DEALERS.

A horse cause was tried before Lord Mansfield, when a witness, on being examined, stated that the horse was

returned to his master after the purchaser had kept it nearly three months. "What!" said Lord Mansfield, "was your master willing at the end of three months to take it back again? How could he be such a fool? Who advised him to do that?" "My lord," said the witness, "I advised him to take the horse again." "How could you be such a fool?" asked the Chief Justice. "Please you, my lord," said the witness, "I told my master what all the world knows, that your lordship was always against a horse dealer, right or wrong, and therefore he had better take it back at once."

A WITNESS ONCE AT THE UNIVERSITY.

Sir Fletcher Norton, at Durham, was examining a sailor as a witness, who by his answers greatly irritated that choleric counsel. "Oh," says Sir Fletcher, "you affect to be a very clever fellow, no doubt, quite a wit." "To be sure I do," says the sailor, "I happen to be a well-educated one." "You well educated! why, where were you educated?" says Sir Fletcher. "At the university, in course!" was the answer. "University! at what university could you have been educated?" "Why," said the sailor, "at the university where you were expelled for your impudence—Billingsgate!"

A WITNESS WHO COULD ONLY SPEAK SLANG.

Lord Mansfield used to tell this story of a witness from St. Giles, who once gave evidence before him in a trial arising out of a street quarrel. Witness being desired to tell all he saw, began, "My lord, as I was coming by the corner of the street, I stagged the man." "What is stagging a man?" "Stagging, my lord, why you see, I was down upon him." "Well, but I don't understand 'being down upon him' any more than 'stagging him'?" "Why, an't please your lordship, I speak as well as I can. I was up, you see, to all he knew." "To all he knew! I am as much in the dark as ever." "Well then, my lord, I'll tell you how it was." "Do so." "Why, my lord, seeing as how he was a rum kid, I was one upon his tibby." The fellow had at last to be

sent out of court as incapable of describing anything, and he was heard in Westminster Hall to say to one of his companions that he had most "gloriously queered old Full Bottom!"

A BORROWING COUNSEL PUTTING HIS FOOT IN IT.

It fell to Serjeant Davy's lot to search out the truth as to the responsibility of a proposed bail; so he thought it a fitting occasion for the display of his bullying pleasantries. "Sir," said the serjeant, sternly, to the bail, "and pray, sir, how do you make out that you are worth £3,000?" The gentleman stated the particulars of his property up to £2,940. "That all's very good," said the serjeant, "but you want £60 more to be worth £3,000." "For that sum," replied the gentleman, by no means disconcerted, "I have a note of hand of one Mr. Serjeant Davy, and I hope he will have the honesty soon to settle it." The serjeant looked disconcerted, and Lord Mansfield observed, in his usual urbane tone, "Well, brother Davy, I think we may accept the bail."

BULL DAVY BULLYING A WITNESS.

Serjeant Davy usually went by the name of "Bull Davy," on account of his manners, and he was originally a druggist, and had once become bankrupt. Being once on the Western Circuit, he cross-examined an old country-woman very rigorously, respecting a circumstance that had happened within her observation some years before. "And, pray, good woman," said the serjeant, "how is it that you should be so particular as to remember that this affair happened on a market day?" "Why, sir," replied the woman, "by a very remarkable token, that all the cry of the city went that Mr. Davy, the drugster, had that morning shut up shop and run away." "I think, brother," said the judge, "that you want no further proof of the witness's memory."

DISCONCERTING A BLUSHING WITNESS.

In 1826, Grimaldi, the famous clown, was called as a witness in a theatrical litigation, and Sir James *Scarlett*,

as counsel, cross-examined him, and assumed the tone of rallying him. The court was alert at the appearance of so famous a name, and counsel began, and all eyes turned to them. "Dear me! pray, sir, are you the great Mr. Grimaldi, formerly of Covent Garden Theatre?" "I used to be a pantomime actor, sir, at Covent Garden Theatre" (slightly blushing). "Yes, I recollect you well. You are a very clever man, sir. (Pause.) And so you really are Grimaldi, are you? (Pause.) Don't blush, Mr. Grimaldi, pray don't blush: there is not the least occasion for blushing." "I don't blush, sir." "I assure you, you need not blush so." "I beg your pardon, sir, I really am not blushing" (said witness, rather angrily, and the court tittering). "I assure you, Mr. Grimaldi, you *are* blushing violently" (said counsel, smilingly). "I beg your pardon, sir, but you are really quite mistaken. The flush which you observe on my face is a *scarlet* one, I admit, but I assure you that it is nothing more than a reflection from your own." (Table turned; much laughter, in which Sir James Scarlett was pleased to join.)

A WITNESS EMPLOYED AS A SURGEON.

A witness dressed in a fantastical manner, having given very rambling and discreditable evidence, was asked in cross-examination what he was. Witness: "I employ myself as a surgeon." Lord Ellenborough, C.J., said, "But does any one else employ you as a surgeon?"

A WITNESS EXACT IN MEASUREMENTS.

A witness was cross-examined as to his distance on a certain occasion from a particular place, and answered very peremptorily, "I was just four yards, two feet, and six inches off." "How came you to be so exact, my friend, in this matter?" "Because I expected some fool or other would ask me, and so I was determined to measure it."

A DISGUISED QUAKER WITNESS.

A Quaker coming into the witness box at Guildhall, without a broad brim or dittoes, and rather smartly

dressed, the crier put the book into his hand and was about to administer an oath, when he required to be examined on his affirmation. Lord Ellenborough, asking if he was really a Quaker, and being answered in the affirmative, exclaimed, "Do you really mean to impose upon the court by appearing here in the disguise of a reasonable being?"

A WITNESS DEFINING THE SIZE OF A STONE.

At the York Assizes, on the trial of an action of assault and battery, a witness gave the following lucid account of the cause of action. "Did you see the defendant throw the stone?" "I saw a stone, and I'ze pretty sure the defendant throwed it." "Was it a large stone?" "I should say it was a largish stone." "What was its size?" "I should say a sizeable stone." "Can't you answer exactly how big it was?" "I should say it was a stone of some bigness." "Can't you give the jury some idea of how big it was?" "Why, as near as I can recollect, it wur something of a stone." "Can't you compare it to some other object?" "Why, if I wur to compare it so as to give some notion of the stone, I should say it wur as large as a lump o' chalk!"

PERSONAL APPEARANCE OF THE DEVIL.

In the time of Louis XIV. several French ladies of rank were accused of magical practices. A duchess among them was examined by a magistrate of noted ugliness. She confessed that she had conversed with the devil. "Under what figure was he?" said the magistrate, gravely. "In his own person," said the duchess, "and he resembled you as much as one drop of water does another." Then turning to the clerk she desired him to write down her answer. The magistrate, apprehensive of the ridicule, took care to stop and suppress the examination.

THE SUFFICIENCY OF BAIL.

Lord Mansfield was once listening to a wrangle by counsel as to the sufficiency of bail. A Jew, who was dressed in a very gorgeous suit of clothes covered with

gold lace, was justifying his bail, and enumerating the particulars of his property, which were made matter of much cross-examination and bullying by Serjeant Davy. At last the Chief Justice exclaimed: "For shame, brother Davy! Don't you see that he would *burn* for the money?"

A SAILOR ABAFT THE BINNACLE.

An action was tried before Lord Mansfield as to a collision between two ships at sea, and a sailor, as a witness, on giving his account of it, said, "At the time I was standing abaft the binnacle." Lord Mansfield asked "where was abaft the binnacle?" Upon which the witness, who had evidently been taking his grog shortly before, exclaimed aside, but loudly enough to be heard by all present: "A pretty fellow to be a judge and not to know where abaft the binnacle is!" Lord Mansfield, instead of threatening to commit him for contempt, said, "Well, my friend, fit me for my office by telling me where abaft the binnacle is: you have already shown us pretty well what is meant by *half seas over!*"

WITNESS SEEING HER SOVEREIGN.

A counsel defending a prisoner, cross-examined a woman thus: "Tell me, good woman, what sort of money had you?" "I had eight shillings in silver and a sovereign in gold." Lawyer (drawing himself up proudly and solemnly). "Tell me, good woman, did you ever see a sovereign in anything else than gold?" "Oh yes, sir, I saw Queen Victoria, God bless her!"

CROSS-EXAMINING THE COMEDIAN.

Billy Burton, the American actor, was examined in some proceeding as to how he had spent certain money. About £3,000 was to be accounted for, and a young advocate, putting on a look of great severity, said, "Now, sir, I want you to tell the court and jury how you used the £3,000?" The actor, putting on a serio-comic face, and winking to the audience, said, "Oh, the lawyers got that!" The judge and jury roared with laughter, and the counsel thought he need not go further into details.

A WITNESS WHO WAS A TRANSLATOR.

At a trial at the Old Bailey, in 1796, of a man for stealing shoes, a witness for the prosecution was asked what he was. He answered, "A translator." "What!" said the judge, who noticed that the witness did not look like a learned man acquainted with the languages; "do you mean a translator of languages?" "No, my lord, of soles." "Of souls! I do not understand you: do you mean that you are a clergyman?" "No, my lord, I'm a translator: I mend boots and shoes." "You mend boots and shoes; you are a cobbler then?" "Yes, my lord."

A WITNESS WHO HAD BEEN BLINDFOLDED.

A celebrated advocate at the beginning of this century defended a young lady of rank who was indicted for child murder. The principal witness was a knowing *accoucheuse*, who had been taken by force, blindfolded, to the lady's house. She swore that her guide forded a river twice in going to the house where her assistance was wanted. The advocate, in commenting on this evidence, called the jury's attention to the fact that there was only one river between the houses; and supposing the guide, in order to deceive the midwife, should have made a wheel round *again* to pass it, then she must have forded it a *third* time. The ingenuity of this remark so puzzled the jury that they acquitted the prisoner without leaving the jury box.

A DEAF WITNESS.

At the Durham Assizes an action was tried which turned out to be brought by one neighbour against another for a trifling matter. The plaintiff was a deaf old lady, and after a little, the judge suggested that the counsel should get his client to compromise it, and to ask her what she would take to settle it. The counsel shouted out very loud to his client, "His lordship wants to know what you will take?" She at once said, "I thank his lordship kindly, and if it's no ill-convenience to him I'll take a little *warm ale!*"

A JUDGE CHALLENGING A WITNESS TO BOX THE COMPASS.

A seaman was applying to the judges of the admiralty for the office of a ship to the Indies, and the judges thought he was not qualified. The judge said "he believed he could not say the points of his compass." The seaman answered that he could say them, under favour, better than he could say his *pater noster*. The judge replied, that he would wager twenty shillings with him upon that. The seaman taking him up, it came to trial, and he began, and said all the points of the compass exactly. The judge likewise said his *pater noster*, and when he had finished it, he required the wager according to agreement, because the seaman was to say his compass better than he his *pater noster*, which he had not performed. "Nay, I pray, sir, hold," quoth the seaman; "the wager is not finished, for I have but half done." And so he immediately said his compass backward very exactly, which the judge failing of his *pater noster*, the seaman carried away the prize.—Bacon's Apophth.

COUNSEL DEALING WITH HIS OWN WITNESSES.

Sir Frederick Thesiger was engaged as counsel against a learned serjeant who was often transgressing the rule as to leading his witnesses. After many objections raised, the serjeant, irritated by the interruptions, protested to the judge that he was entitled to deal with his own witnesses as he pleased. "You may *deal* but you sha'n't *lead*," retorted Sir Frederick.

LAYING TRAP FOR A CONFIDENT WITNESS.

O'Connell was counsel for two brothers who were indicted at the assizes in Ennis for arson, having tried to set fire to the police barracks by igniting a jar of pitch. He got a skillet containing pitch secretly placed near the witness's chair, and concealed by his hat. The chief witness for the prosecution said that he discovered the barrack on fire, and knew it was set on fire by pitch, for he got a smell of it. He was cross-examined as follows, by O'Connell: "You know the smell of pitch then?" "I

do, well." "You seem to be a man able to smell pitch anywhere." "Yes, anywhere I found it." "Even here, in this court house, if it was here?" "No doubt I would." "And do you swear you don't get the smell of pitch here?" "I do solemnly: if it was, I'd smell it." Then O'Connell, taking his hat off the skillet of pitch which was near the witness's chair, and holding it up to the jury, called out to the witness: "Now you may go down, you perjured rascal! go down!" The jury entirely discredited the witness after this, and acquitted the prisoners.

A WITNESS PROVING A TENDER.

On one occasion Garrow was examining an old spinster, for the purpose of proving the tender of a certain sum of money having been duly made in settlement of an account, but found some difficulty in making out his case. Jekyll, who was in court at the time, scribbled the following epigram, and threw it over to him.—

"Garrow, submit—that tough old jade
Will never prove a tender maid."

It used to be said of Mr. Garrow, that he was not only an advocate but an actor, and that when silent he did not cease addressing the jury by the play of his features.

A WITNESS ABUSED FOR FORTUNE TELLING.

Garrow, when at the height of his reputation, was examining a witness in the court of King's Bench. Among other questions, he asked him if he were not a fortune teller. "I am not," replied the witness; "but I can tell yours." "What is that to be?" asked Garrow. "Why, sir, as you made your first speech at the Old Bailey, so you will make your last there." "Witness!" exclaimed Lord Kenyon, quite scandalized, "I shall commit you for your insolence." "Take care, my lord," was the answer, "that you do not commit yourself."

CROSS-EXAMINING AN ARCHITECT.

Mr Alexander, an eminent architect of several fine buildings in Kent, was once cross-examined by Serjeant

Garrow, whose object was to depreciate the testimony of the witness. The cross-examination was as follows: "You are a builder, I believe?" "No, sir, I am not a builder, I am an architect." "Ah, well, architect or builder, builder or architect, they are much the same, I suppose?" "I beg your pardon, sir, I cannot admit that: I consider them to be totally different." "Oh, indeed, perhaps you will state wherein this great difference consists?" "An architect, sir, prepares the plans, conceives the design, draws out the specification, in short, supplies the mind. The builder is merely the bricklayer, or the carpenter; the builder is, in fact, the machine. The architect is the power that puts the machine together, and sets it going." "Oh, very well, Mr. Architect, that will do. And now, after your very ingenious distinction without a difference, perhaps you can inform the court who was the architect of the Tower of Babel?" "There was *no* architect, sir; and hence all the *confusion*!"

A WITNESS WHO WAS A SURVEYOR.

An action was brought by a builder at Battle, to recover the amount of his bill for building a house. A surveyor was examined to prove that the work had been properly executed, and, according to the custom of his fraternity, he delivered his evidence in a tone of pompous conceit. Cockle, in examining him, treated him with an air of mock respect, which made him believe that the serjeant admitted his pretensions, and estimated him at the value he set upon himself. Cockle begged him to produce the original of the estimate he had made of the work charged. It was accordingly handed to him. It stated the names of the plaintiff and defendant, the various items of the charge, and concluded, "I value at the sum of £350 the above work done at Battle, in the county of Sussex" When the serjeant addressed the jury, he did so in the following words: "Gentlemen, a surveyor is an anomalous kind of animal; he can neither think, nor speak, nor write, like a common person. His perfect conviction of his own importance is shown in every word he utters, and in every sentence he writes, even to the making out of a carpenter's bill. This puppet

surveyor is not content with giving his estimate in plain language, and signed with his name; he must assume the style of an ambassador, and subscribe as an envoy would a treaty of peace. Look at the estimate and bill. He sets out the particulars of the charge, which he pronounces to be of the value of £350, per carpenters' work. That is plain English; but how does it conclude? In the dignified language of diplomacy: 'Done at Battle, in the county of Sussex,' signed as our ambassador at Paris would conclude a treaty of peace for Great Britain."—*1 Law and Lawyers*, 206.

BULLYING A SCOTCH WITNESS.

In 1817, an action was tried before Commissioner Adam, in which the trustees of the Kinghorn Ferry and the Burgh of Kircaldy were the parties. The evidence was very strong in favour of the trustees; but it was suggested that the clerk of the trustees had made a present of a coat to the chief witness, and it became important to shake his credit. The cross-examining counsel then began: "Pray, where did you get that coat you're wearing?" "Coat! coat, sir! whar got I that coat?" "Yes, I wish to know where you got that coat." "Maybe, ye ken whar I got it?" "We wish you to tell the jury from whom you got it." "Did ye gie me that coat?" "Tell the jury where you got that coat." "What's your business with that?" "It is material that you should tell the jury where you got that coat." "I'm no obliged to tell aboot ma coat!" "Do you not recollect whether you bought that coat, or whether it was given to you?" "I canna recollect everything aboot ma coats, whan I got them, or whar I got them." "You said you remembered perfectly well about the boats forty-two years ago, and the people that lived at Kircaldy then, and John Marr's boat, and can you recollect where you got that coat you have on at present?" "I'm no gaun to say onything aboot coats." "Did Mr. Douglas, clerk to the trustees, give you that coat?" "I didna get the coat to do onything wrang for't; I didna engage to say onything that wasna true." The witness was leaving the box, when the judge called him back, and explained that it

was not suspected that he got the coat improperly, but that it was important for his own credit to say where he got the coat. The judge added, "I ask then, where did you get the coat?" "I'm no obliged to tell aboot the coat." *Judge*. "True, you are not obliged to tell where you got it; but it is for your own credit to tell." *Witness*. "I didna come here to tell aboot coats, but to tell aboot boats and pinnaces." *Judge*. "If you do not tell, I must throw aside your evidence altogether." *Witness*. "I'm no gaun to say onything aboot ma coat: I'm no obliged to say onything aboot it." The witness was about to retire when another judge, Lord Gillies, recalled him, and said, "How long have you had that coat?" *Witness*. "I dinna ken hoo lang I hae had ma coat. I hae plenty o' coats. I dinna mind aboot this coat or that coat." *Judge*. "Do you remember anything near the time? Have you had it a month, or a week, or a year? Have you had it a week?" *Witness*. "Hoot aye, I daresay I may." *Judge*. "Have you had it a month?" *Witness*. "I dinna ken, I cam here to speak aboot boats, and no aboot coats." *Judge*. "Did you buy the coat?" *Witness*. "I dinna mind what coat I bought, or what coat I got." The witness was then given up.—Roger's Traits of Scot. People.

A WITNESS WHO HAD LEFT HIS NATIVE COUNTRY.

Having received his education in England, Murray (afterwards Lord Mansfield), always considered himself as an Englishman. His Scotch origin was once, however, thrown in his teeth, and not without some effect. When General Sabine was governor of Gibraltar, he endeavoured to extort a sum of money from a Barbary Jew, who lived in that place; but his efforts were unavailing. To punish the Jew, therefore, for his contumacy, Sabine had him seized and put on board a vessel, and sent him to Tetuan, with a letter to the bashaw, informing him he would receive therewith a pigeon to pluck. The bashaw, struck with compassion at the Jew's ill-usage, liberated him, and gave up Sabine's letter, with which the Jew came to England, where he brought an action against the governor. When the action was tried, Murray, who was counsel for Sabine, affected to treat the

matter very lightly. "Great stress had been laid," he said, "on the cruelty of the proceeding. The Jew, it had been said, was banished. True, he was banished! but to where? Why, to the place of his nativity! Where is the cruelty, the hardship, the injustice of banishing a man to his own country?" Nowell, the counsel for the Jew, thereupon said: "Since my learned friend thinks so lightly of this matter, I would ask him to suppose the case his own. Would *he* like to be banished to his native land (Scotland)?" (Great laughter.)—*1 Law and Lawyers, 185.*

A WITNESS WITH A RED NOSE.

Dunning, while examining a witness, asked him if he did not live at the very verge of the court. "Yes, I do," was the reply. "And pray, why have you selected such a spot for your residence?" "In the vain hope of escaping the rascally impertinence of *Dunning*," was the retort.

A witness with a Bardolphian nose, coming in Dunning's way, he said to him: "Now, Mr. Coppernose, you have been sworn, what do you say?" "Why, upon my oath," replied the witness, "I would not exchange my copper nose for your brazen face."

A WITNESS WHO WAS MESSENGER TO THE PRESS.

A messenger for the press, as that officer was formerly denominated, whose business it was to obtain information respecting seditious publications, was once giving evidence before the court of King's Bench, against a bookseller. Mr. Hungerford, a famous advocate of the time, but more esteemed for his wit and his love of quibbling than for his law-learning, who was examining him, made some reflections on the meanness of the messenger's duties. The messenger replied with some quickness: "I consider the place of messenger to the press to be quite as reputable as that of merry-andrew to the bar."

A WITNESS UPON COCKLE SAUCE.

Serjeant Cockle, who was a rough blustering fellow, once got from a witness more than he gave. In a trial of a right of fishery, he asked the witness, "Dost thou love fish?" "Aye," replied the witness, with a grin; "but I donna like cockle sauce with it!" The roar of laughter which echoed through the court, rather disturbed the learned serjeant.

Another witness, a female, was much worried in cross-examination by the counsel, who at last very coarsely finished with remarking that she had brass enough to make a saucepan. To which she retorted: "And you have sauce enough to fill it."

CHILDREN AS WITNESSES.

One of the sanctions, which in the case of adults is required to keep a witness right, is the solemnity of an oath; and it is here that the difficulty in admitting children as witnesses often arises. A child may have no definite notion why truth is either necessary or desirable, whether in a court of justice or elsewhere, and yet may instinctively state the truth notwithstanding. But a judge usually tries to discover that a child has either been taught, or has come to know, that it is wrong to speak falsely; and when there is a glimmering of this sentiment, then the evidence is at once received. One judge was quite satisfied with the capacity of a girl of six, who told him she said her prayers, thought it wrong to tell lies, or who by way of answer said it was a bad thing to tell a lie. But since oaths have been, to a great extent, allowed to be superseded by a solemn declaration, the same strictness with which this practice has hitherto been pursued in the case of children may be relaxed also, seeing that it is almost an instinctive tendency of children to speak the truth, especially when left to themselves, and when without fear of immediate consequences. But it seems a questionable practice to postpone a trial, in order that a child may be educated in the meaning and effect of oaths; for this tends to

distort the evidence, and detract from the reliability of the first impressions. Nevertheless, this was once done, in 1795, by Justice Rooke, who, when a little girl was brought forward as a witness in a criminal prosecution, postponed the trial to next assizes, to allow a clergyman to instruct her in this subject; and some of the other judges of that day were said to approve of that course. But this will probably seldom be done, unless the party affected by such evidence has the benefit of comparing the two accounts given by the child before and after this course of enlightenment.—I Paterson's Lib. Subject, 338.

A SCHOOLBOY'S EVIDENCE OF THE MASTER'S DRUNKEN HABITS.

In a Scotch proceeding instituted before a Presbytery of Ministers for the deposition or deprivation of a parish schoolmaster for drunkenness, a boy who attended the school was examined by the lawyer who prosecuted, and the following questions and answers were put and given. "When you attended the school, did you notice that the master had a habit of frequently going into a closet which opened out of the schoolroom?" "Yes, I did." "Did he very frequently enter this closet?" "Yes, he very often went into it." "Have you ever been in the closet? Do you remember what it contained?" "Yes; I remember what I saw in it." "Now tell the court what you saw in the closet." "There were a good many bottles, and they were all arranged on shelves." "Very good. And when the master entered, had you the curiosity to look what he was doing?" "Yes; I and the other boys used to look in after the master, and see him there." "You did? Well, now tell us what you saw the master do on those occasions?" "He was handling bottles." "Handling bottles! very good. And can you tell us what the bottles contained?"

"Yes." "Well now, just tell these gentlemen what the bottles contained." (This final question was put as the lawyer was about to resume his seat with a triumphant air.) "Yes; they were *ink* bottles." No further questions were put to this witness.

A BOY WITNESS.

The Lord Mayor one day had a little boy as a witness in a case before him, and he thought fit, according to the usual practice, to test the boy's orthodoxy by first asking, in a paternal way, whether he knew where bad people went to after they were dead. His lordship was very much disconcerted by the ready answer, "No, I don't; no more don't you: nobody don't know that."

THE JUDGE QUESTIONING THE LITTLE GIRL.

Mr. Justice Allan Park, when trying a cause in which a little girl aged ten was a witness, before taking her evidence, first asked her several questions about whether she knew the Catechism, and Ten Commandments, and Lord's Prayer, and having received favourable answers, encouraged her greatly, and said he had just one more question to put, which the court and audience felt would make all right. "Just tell us, little girl, what you do before going to bed?" The girl was silent; the question was repeated, and after further encouraging her not to be afraid, she at last said confidentially, amid breathless silence in the court, "I put off my clothes, and put on my night-cap!"

A BOY WHO ONCE SPOKE WITH THE PRIEST.

At an assizes at Limerick, the judge tried a case of murder, and one of the witnesses was a boy who seemed very young and ignorant, so that a preliminary examination into his qualifications was thought necessary, and the following questions and answers passed: "Do you know my lad, the nature of an oath?" "No." "Do you mean to say that you do not know what an oath is?" "Yes." "Do you know anything of the consequences of telling a lie?" "No." "No! what religion are you of?" "A Catholic." "Do you never go to mass?" "No." "Do you never see your priest?" "Yes." "Did he never speak to you?" "Oh, yes." "What did he say to you?" "I met him on the mountain one day, and he bid me hold his horse, and be d—d to me." "Go down, you are not fit to be sworn."

JURIES AND THEIR EXCELLENCES.

It has been well observed, that notwithstanding the rudeness and defects of the common law, we should ever remember its favour to personal liberty, and its admirable machinery for separating law and fact, and assigning each to a distinct tribunal; wherein it excels all other systems of jurisprudence which have appeared. We should likewise bear in mind that it offered many specific remedies, which, after the improvement of equitable jurisdiction, fell into desuetude.

TRIAL BY JURY EULOGISED BY ERSKINE.

Trial by jury being about to be introduced into Scotland, Erskine took occasion to remind the House of his devoted attachment to this institution. The Duke of Cumberland, afterwards King of Hanover, excusably joined in a titter occasioned by the repetition of what their lordships had so often heard, when the indignant orator thus burst forth: "I observe an illustrious personage on the benches opposite smile, and I must be bold to tell him, that such a smile is inconsistent with the decorum with which this House is in the habit of hearing every noble lord express his sentiments. But it is particularly indecorous and indecent in that illustrious personage to smile at a panegyric upon the 'trial by jury.' 'Trial by jury' placed the present royal family on the throne of England, and 'trial by jury' has preserved our most gracious Sovereign, that illustrious person's father, throughout a long and glorious reign. 'Trial by jury' is the best security for the rights of your lordships, and of every order in the state, and I can never cease to feel that 'trial by jury' has enabled me to address your lordships upon equal terms with the highest man among you."

JURIES FORMERLY KEPT WITHOUT FOOD.

There can be no reason for keeping the jury from eating, far less from fire and light, as to do so would only tend to lead them to neglect their duty; and all judges arrange the sittings of the jury, with a view to the requirements of nature, and no longer look with jealousy

on any trifling indulgence, as if it were a point to render their duty disagreeable and irksome. It has been said, indeed, that if the jury are treated with meat or other entertainment by one of the parties, before they agree on their verdict, and they give their verdict for him, such verdict will be void; though it would be otherwise if their verdict had previously been agreed to. But juries can scarcely, in modern times, be presumed to decide according as one or other of the parties treated them to refreshment, though the scandal of such an incident should be scrupulously avoided.

In one case, 30 Elizabeth, it is related, that the jury retired to deliberate, and remaining a long time without concluding anything, "the officers of the court, seeing this delay, searched the jurors, if they had anything about them to eat, upon which search it was found that some of them had figs, and others pippins; for which the next day the matter was moved to the court, and the jurors were examined upon it upon oath. And two of them did confess that they had eaten figs. Three others said they had pippins, but did not eat them. Those who had eaten were each fined five pounds." It was, however, decided that the verdict was not void, as the eating was at the expense of the jury themselves, and not of the party. It seemed almost a rule, that if the jury ate at the expense of the party, and gave a verdict for him, it was bad; but if against him it was good. In a case in 1758, where the officer refused to let the jury have candles, Lord Mansfield thought it necessary first to ask if either of the parties objected. Fortunately neither did object.—1 Paterson's Lib. Subject, 456.

JURY GIVING THEIR VERDICT FOR FAVOURITE COUNSEL.

Lord Eldon said, "I remember Mr. Justice Gould trying a cause at York, and when he had proceeded for about two hours, he observed, 'Here are only eleven jurymen; where is the twelfth?' 'Please you my lord,' said one of the eleven, 'he is gone away about some business, but he has left his verdict with me.'

"Once, when leaving Newcastle after a very successful assize, a farmer rode up to me and said, 'Well,

Lawyer Scott, I was glad you carried the day so often, and if I had had my way, you should never once have been beaten. I was foreman of the jury, and you were sure of my vote, for you are my countryman, and we are proud of you.' ”

VERDICT FOR THE COUNSEL.

Sir Francis Palgrave says that within memory, at the trial of a cause at Merioneth, when the jury were asked for their verdict, the foreman answered: “My lord, we do not know who is plaintiff or who is defendant, but we find for whoever is Mr. Jones’s man.” It turned out that Mr. Jones had been the successful candidate at a recent election, and the jury had been working in his interest.

THE JURY’S FAVOURITE COUNSEL.

Another version of a similar story is this. There is a tradition current on the Welsh Circuit of the great influence and ability of Mr. John Jones, one of the leading counsel. On one occasion, after one of Mr. Jones’s felicitous speeches on behalf of his client in a criminal case, the jury, as soon as the judge had summed up, without waiting for the officer to take their verdict, called out: “My lord, we are all *for John Jones with costs.*”

GRATUITOUS SERVICES OF JURYMEN.

A common jurymen once complained, after a heavy case, of being paid nothing for his attendance, and got a friend to mention this to the judge, who however at once replied: “Tell him that if ever he should have to be tried himself he will get a jury for nothing!”

A JURYPAN OPEN TO CONVICTION.

A jurymen who was noted for his unflinching conduct and frequent singularity of opinion in the course of his duties, was asked by the recorder how it was that he had such difficulty in agreeing with his fellows. The jurymen explained: “Sir, no man is more open than I am to conviction, and to do what is right in every

case; but I have not met with the same consideration in others. It has generally been my lot to be in a jury with eleven of the most obstinate men, who will not listen to reason!"

THE JURORS' UNANIMITY.

When the jury agree, a reasonable confidence is felt, that all other persons would agree; and when they differ, it may with equal reason be assumed that the point submitted to them is so obscure, so delicate, and so ambiguous, that persons equally sensible would take opposite sides, and would stand by their respective views, against all comers, unassailable to all the reasoning and all the argument of all the rest of the world. Considering how solid and intense is the satisfaction, not only to bystanders, but to the parties involved, at this mode of finding guilt or liability—when twelve persons having no interest one way or the other, having heard everything that can be proved or argued on one side and the other, unanimously agree in one view—and how much feebler and less weighty is the judgment of one mind only, however upright and sensible, the result of unanimity is well worth aiming at in all cases. If there are occasional instances in which the jury act perversely or obtusely, they are at least more prone to be humane than a single judge would be, and their dissension may thus be attributed to the weaknesses inherent in human nature itself. And hence the best and least likely to err of all tribunals as yet known among men is that of twelve, or at least several, associated and impartial individuals, to whom is submitted the guilt or innocence, the liability or non-liability, in dispute.—1 Paterson's Lib. Subject, 459.

JURYMEN—ONE HOLDING OUT AGAINST THE REST.

Lord Lyndhurst told a curious anecdote about a trial of a civil cause in which the jury would not agree on their verdict. They retired on the evening of one day, and remained till one o'clock the next afternoon, when, being still disagreed, a juror was drawn. There was only one juror who held out against the rest—Mr. Berkeley

(M. P. for Bristol). The case was tried over again, and the jury were unanimously of Mr. Berkeley's opinion, which was, in fact, right,—a piece of conscientious obstinacy which prevented the legal commission of a wrong.—Greville's Mem.

AN IRISH JURY'S VERDICT FOR THE COUNSELLOR.

Curran, the Irish counsel, one day had a case before a judge and jury. His adversary's case was strong, and he had not a tittle of evidence to oppose to it. So seeing a fellow in the last stage of intoxication amongst the bystanders, he desired him to be placed in the witness box, and told the jury that the other side had made his only witness so drunk that he could not utter a syllable. The jury found for their favourite counsellor without difficulty.

A DEXTEROUS COUNSEL'S WAY WITH JURYMEN.

Lord Abinger, who was so noted when at the bar for winning verdicts, was asked by Lord Houghton whether he had any special secret by which he gained so many successes. Lord Abinger thought his success was mainly owing to his habit of seldom addressing the jury collectively, but of selecting one or two of them, generally one, and by no means always the foreman, with whom he reasoned on the subject as best he could, placing himself as it were in mental communication with him, and going on till he appeared to have convinced him. "Brougham," he added, "at one time detected my process, and imitated me as well as he could, but somehow or other he always hit on the wrong man."

TRIAL BY JURY.

Curran used to tell an anecdote of an Irish Parliament man, who was boasting in the House of Commons of his attachment to the trial by jury. "Mr. Speaker," said he, "with the trial by jury I have lived, and, by the blessing of God, with the trial by jury will I die!" Curran sat near him, and whispered audibly: "What, Jack, do you mean to be hanged?"

JURYMAN'S IDEA OF COUNSEL.

Justice Wightman, when a counsel on the Northern Circuit, was one day leaving the assize court, and found himself walking in a crowd alongside a countryman whom he had seen day by day serving as a juryman, and whom he could not help speaking to. Liking the look of the man, and finding that this was the first occasion in which he had been at the assizes, Wightman asked him what he thought of the leading counsel. "Well," says the juryman, "that Lawyer Brougham be a wonderful man. He can talk, he can; but I don't think nowt of Lawyer Scarlett." "Indeed," exclaimed Wightman, "you surprise me. Why, you have been giving him all the verdicts." "Oh, there's nowt in that," was the reply, "he be so lucky you see; he be always on the right side."

COUNSEL TELLING A STORY TO TAKE IN THE JURY.

A counsel for the prisoner, whom he was defending before Cresswell, J., began to tell the jury the well-known story about the bundle of faggots and the basket of eggs (see p. 313), and of the judge, Allan Park, having at once interposed and directed an "acquittal on account of the interposition of Providence." When it came to Mr. Justice Cresswell to sum up the evidence, he began: "Gentlemen of the jury, the learned counsel for the prisoner has amused you with a story, of which I do not exactly see the application. But, if it means anything, it only shows how a very learned and amiable judge was once taken in or imposed upon by a clever counsel. I, gentlemen, am not taken in, and if I can help it you shall not be taken in either." The judge then analysed the evidence, and the jury convicted the prisoner.

COUNSEL'S ELOQUENCE IN A SEDUCTION CASE.

Mr. Bennett, an Irish counsel, made a pathetic speech for the plaintiff, who claimed damages for the loss of the services of his daughter by the seductive arts of the defendant. He ended with this peroration: "The conduct of this defendant, gentlemen of the jury, has been most flagitious. He wound himself into the confidence

of the father, in order to betray that confidence. He crept like a serpent into his *bosom*, in order that he might sting him behind *his back!*"

TOO MUCH IRONY FOR A COMMON JURY.

Justice Maule used to tell the following story as to the bluntness of perception in a common jury, and the danger of carrying irony (which was his own) too far. A man was indicted and tried before him for wounding with intent to do grievous bodily harm, and also for a common assault. The prisoner's counsel made a desperate attempt to convince the jury, that the prisoner did not intend to do grievous harm, and that they could not find him guilty of anything but a common assault. The judge told the jury that it was quite true what the counsel for the prisoner said, that if the prisoner did not intend to do grievous bodily harm, he could not be convicted of that offence. If, therefore, they were of opinion that the ripping up of the prosecutor's belly, so as to cause the bowels to protrude, was done without the intent of *doing him any bodily harm*, they would acquit the prisoner of the aggravated assault, and find him guilty of a common assault, merely; but if they were of opinion that he had this intent to do grievous harm then they would find him guilty of the greater offence. To the astonishment of all, the jury found the prisoner guilty of a common assault. The judge's irony being too fine, the honest countrymen took it quite seriously.

AN IRISH JUDGE CHARGING JURY IN A CRIM. CON. CASE.

Lord Norbury, the Irish judge, thus charged a jury in a case of criminal conversation with the plaintiff's wife. "Gentlemen of the jury, the defendant in this case is Henry William Godfrey Baker Sterne, and there, gentlemen, you have him from stem to stern. I am free to observe, gentlemen, that if this Mr. Henry William Godfrey Baker Sterne had as many Christian virtues as he has Christian names, we should never see the honest gentleman figuring here as defendant in an action of *crim. con.*"

JUDGE SUMMING UP AND WEIGHING EVIDENCE.

Mr. Justice Perrot was a servile political judge, who was so foolish as to recommend from the bench on his circuit, a congratulatory address on the Peace from the bench of judges. His power of discrimination was well measured by the celebrated way in which he summed up to the jury in a case of a disputed watercourse, at Exeter Assizes. He concluded thus: "Gentlemen, there are fifteen witnesses who swear that the watercourse used to flow in a ditch on the north side of the hedge. On the other hand, gentlemen, there are nine witnesses who swear that the watercourse used to flow on the south side of the hedge. Now, gentlemen, if you subtract nine from fifteen, there remain six witnesses wholly uncontradicted, and I recommend you to give your verdict, accordingly, for the party who called those six witnesses."

THE JURY DECIDING LIBEL CASES.

However difficult it is to define a libel, especially one alleged to be seditious or blasphemous, it might have been expected that, when all the facts came to be explained, and every view presented and discussed, a jury would be able to relieve judges from any further trouble. But owing to a course of practice which was said, in 1782, to have been pretty uniform since the Revolution, judges had come to regard juries as having no other function except to decide whether the piece of paper containing the alleged libel was in point of fact published; and if this was decided in the affirmative, the judges took on themselves to do the rest, and say whether the defendant was guilty or not guilty, thereby exclusively determining, not only the construction and effect of the words used, but the intention of the libeller. The opinions of lawyers and leading statesmen were divided as to the correct doctrine on this subject, the majority of lawyers perhaps defending the court, and the majority of leading statesmen clearly impugning it. It was contended by Erskine, that the obnoxious doctrine had been introduced in 1731, in the time of Lord Raymond, C.J., and had been held pretty uniformly for sixty years, while Lord Mansfield,

C.J., and the judges said it had been so held since the Revolution. Burke said, that such a doctrine, whensoever introduced, tended to annihilate the benefit of trial by jury.

The law was altered by Fox's Act, and the jury then became entitled to find the fact as well as the law.

Lord Camden was entitled to the chief credit of Fox's Act, as he had taken up the subject before Erskine, and adhered to it to the last. It took twenty years to pass Fox's Act, and it passed in 1792. Lord Bathurst, ex-Chancellor, protested against it as completely taking away the rights of judges. And he and Lords Thurlow and Kenyon solemnly recorded their protest, that it would prove the confusion and destruction of the law of England.

Erskine said that "the doctrine of the judges was too absurd to be acted upon—too distorted in principle to admit of consistency in practice—it was contraband in law, and could only be smuggled by those who introduced it—it required great talents and great address to hide its deformity; in vulgar hands it became contemptible."

Lord Mansfield, on the other hand, said that "all this jealousy of leaving the law to the court as in other cases, so in the case of libels, was in the present state of things puerile rant and declamation."—Paterson's Lib. Press, 220.

A SCOTCH JUDGE ENLIGHTENING A JURY STANDING.

Lord Eskgrove, the Scotch judge's tediousness, both of manner and matter, in charging juries was most dreadful. It was then the custom to make juries stand while the judge was addressing them; but no other judge was punctilious about it. Eskgrove, however, insisted upon it; and if any one of them slipped cunningly down to his seat, or dropped into it from inability to stand any longer, the unfortunate wight was sure to be reminded by his lordship that "these were not the times in which there should be any disrespect of this High Court, or even of the law." Lord Cockburn says: "Often have I gone back to the court at midnight, and found him

whom I left mumbling hours before, still going on, with the smoky unsnuffed tallow candles, in greasy tin candlesticks, and the poor despairing jurymen, most of the audience having retired or being asleep; the wagging of his lordship's nose and chin being the chief signs that he was still charging. A very common arrangement of his logic to juries was this: "And so, gentlemen, having shewn you that the pannell's argument is utterly impossibill, I shall now proceed for to shew you that it is extremely improbabil."—Cockburn's Mem., 124.

A JURYMAN'S OBSTINACY.

A strange incident occurred during one of the trials relating to Junius. Serjeant Glyn had made his speech for the defendant, and the judge was delivering his charge, when a jurymen started up, and cried out, "You need not say any more, for I am determined to acquit him." The Attorney-General moved to have the man removed from the jury, but Glyn was too shrewd not to see the difficulty of doing that, and the trial was put off.

A NICE QUESTION OF DAMAGES FOR A JURY.

Lord Denman said he once remembered an action tried before Chief Justice Gibbs, where Alderman Wood was sued for damages for an illegal imprisonment. It was contended that the imprisonment was illegal because the conviction did not also, as it ought to, direct that the plaintiff should be whipped. The Chief Justice accordingly with much gravity told the jury, that they must give to the plaintiff the full damages he had sustained by reason of not having been whipped!

A JURYMAN FALLING DOWN IN A FIT.

On a trial before Lord Loughborough, in 1792, of an action for assault, the foreman was just about to deliver in the verdict for £30, when one of the jurymen fell down in a fit, which alarmed all present. The plaintiff's counsel, Serjeant Marriott, thereon said that he did not see why his client should lose the benefit of the verdict for this accident. He requested the judge to discharge

the jury, and call another. Serjeant Bond, for the defendant, thought the best way would be to withdraw a juror. Lord Loughborough said if counsel could not agree, he did not think he had power to do anything but discharge the jury; there could be no verdict because there had been no trial. The plaintiff must therefore move the court for a new trial, and he could do so next morning.

His lordship added, that once on circuit, in a trial for felony, a jurymen fell into a fit during the trial, and was dead drunk. He discharged the jury in consequence, and afterwards, on argument, the court decided he had done rightly. The above case, he said, was new, and he did not recollect that the circumstance had ever happened before.

EDUCATING SPECIAL JURYMEN.

Lord Campbell says: "Lord Mansfield did much for the improvement of the commercial law in this country, by rearing a body of special jurymen at Guildhall, who were generally returned on all commercial causes to be tried there. He was on terms of the most familiar intercourse with them, not only conversing freely with them in court, but inviting them to dine with him. From them he learned the usage of trade, and in return he took great pains in explaining to them the principles of jurisprudence by which they were to be guided. Several of these gentlemen survived when I began to attend Guildhall as a student, and were designated and honoured as "Lord Mansfield's jurymen." One in particular, I remember, Mr. Edward Vaux, who always wore a cocked hat, and had almost as much authority as the Lord Chief Justice himself."—2 Camp. Ch. J.J.'s, 407.

A JUDGE EXPLAINING CONSEQUENTIAL ISSUE.

Mr. Justice Burrough, of the Common Pleas, used to resort to the use of proverbs and parables in dealing with the juries. One day at nisi prius, much talk was made about a consequential issue in the case. He began to explain it to the jury thus: "Gentlemen of the jury, you have been told that the first is a *consequential issue*.

Now perhaps you do not know what a consequential issue means; but I daresay you understand nine pins. Well then, if you deliver your bowl so as to strike the front pin in a particular direction, down go the rest. Just so it is with these counts. Knock down the first, and all the rest will go to the ground; that's what we call a *consequential issue*."

A SHORT ADDRESS TO THE GRAND JURY BY THE JUDGE.

Judge Foster, a short time before his death, went the Oxford Circuit, in the hottest part of one of the hottest summers ever known. He was then so far advanced in years as to be scarcely equal to the duties of his office. When the grand jury of Worcester attended him, he addressed them as follows: "Gentlemen, the weather is extremely hot, I am very old, and you are very well acquainted with what is your duty; I have no doubt but you will practise it."

A JURYPAN DEAF IN ONE EAR.

Baron Alderson was the judge to try causes, and a jurypan presented himself who, being very deaf, asked the clerk who administered the oath to speak up. The judge, on inquiry, was told by the jurypan that he was deaf with one ear; the judge replied, "Well then, you may leave the box, for it is necessary that jurymen should hear both sides."

CHAPTER XIII.

ABOUT THE DEAD AND THEIR WILLS.

A JUDGE LEAVING LEGACY TO PAY THE NATIONAL DEBT.

When Sir Joseph Jekyll died, he left his fortune to pay the national debt. Lord Mansfield said: "Sir Joseph was a good man and a good lawyer, but his bequest was a very foolish one. He might as well have attempted to stop the middle arch of Blackfriars bridge with his full bottomed wig."

The will was afterwards set aside by the relatives, on the ground of imbecility.

A LAWYER PURPOSELY LEAVING HIS WILL OBSCURE.

Serjeant Maynard, the black-letter lawyer, who died in the reign of William III., is said to have left a will purposely worded in obscure terms, so as to give rise to litigation, and settle some very fine moot points which had so often vexed him in his lifetime.

LAWYERS' WILLS.

A great lawyer who had a very bad son, in his last will left him a legacy to such a value and this verse of Mr. Pope's to think often of—

"An honest man's the noblest work of God."

Spence, in his "Anecdotes," thinks this was said of Lord Mansfield, but he never had a son.

Lord Chancellor Cowper on his death-bed ordered that his son should never travel (it is by the absolute desire of the Queen that he does). He ordered this from a great

deal of observation on its effects. He had found that there was little to be hoped and much to be feared from travelling. Atwell, who is the young lord's tutor abroad, gives but a very discouraging account of it too in his letters, and seems to think that people are sent out too young, and are too hasty to find any great good from it.—Spence's Anecdotes.

WILLS AS A SOURCE OF LITIGATION.

Lord Eldon says that when he went the Northern Circuit, the first toast at the circuit mess table after the King, was "the schoolmasters." In those days they made wills, etc., which furnished frequent employment to the lawyers.

LIBELS ON THE DEAD.

History is said to swarm with libels on the dead and the living. Nevertheless, that expression is sometimes used in the law as if the same kind of injury were possible towards the dead as towards the living, and as if the former were not yet beyond the reach of detraction and could still cry aloud for redress. This was never more than a figure of speech, indicating that sometimes the relatives of a person recently dead were treated as identified with their predecessor, and as if the inanimate clay could be deemed on such occasions to glow with anger, pride, or revenge. By the Roman law the heir was bound to protect the good name of the deceased, and any insult offered to the dead body was deemed offered to himself, and a good cause of action. Hence, when a father's statue was struck with a stone, this was an injury to the son and heir, and could be redressed by action. Our law has never gone so far as to give damages, and yet there are traces of the same right and the same wrong.

The ancient Egyptians surpassed all nations in the liberal manner in which they disposed of this difficulty; for after the death of a person, a tribunal of forty judges sat in solemn inquest to try his character for good and evil, and cast up the balance. If, upon the whole, the accusations were not proved, then his body was allowed to be buried; but if the verdict was against him, the

corpse was refused burial, and was kept as a chattel, remaining in the house of his descendants till the judgment could be reversed. Solon was thought to make a just law, that no man should be allowed to speak ill of the dead.—Paterson's Lib. Press, 155.

FINDING OUT THE MEANING OF A WILL.

Lord Alvanley, when the construction of a difficult will was involved in a suit before him, at the Rolls Court, was told by the counsel arguing the case that it was the duty of the court to find a meaning for the testator, however difficult. The judge thereupon said: "My duty to find a meaning! Suppose the will had contained only three words, *Fustum funnidos tantaraboo*, am I to find the meaning of this gibberish?"

THE GREAT THELLUSSON WILL CASE.

Peter Thellusson, by his will, left his immense real and personal property to trustees, that the rents and profits might accumulate during the lives of all his sons, and of all his grandchildren, that should be living at his death, and of any grandchild that should be born within the usual time of gestation after his death, to be laid out in landed estates, which were to be finally divided between the representatives of his three sons, and failing his descendants, to go to pay the national debt. His family disputed the validity of the will, on the ground that although the *corpus* of the property might have been rendered inalienable for a period thus limited, the rents and profits could not be disposed of; and that it was contrary to public policy to allow such an accumulation, which might render the individual in whom the whole might centre dangerous to public liberty, and too powerful for a subject. The decree supporting the will was affirmed on an appeal to the House of Lords, but an Act of Parliament, introduced by Lord Chancellor Loughborough, was passed (39 & 40 Geo. III., c. 98), forbidding such accumulations in future for a longer period than twenty-one years. All apprehensions of the Thellusson property swelling to a magnitude dangerous to the crown

or to public liberty were effectually allayed by the Court of Chancery eating up almost the whole of the annual rents and profits; and finally the possession of the property was given, by Act of Parliament, to the family, on their securing to the trust the very moderate sum which would have remained to accumulate after all law expenses were defrayed.

When the Thellusson will was before the courts, an actuary calculated the sums involved. The money at stake was £600,000. If the accumulations were calculated within seventy-five years, being the shortest period thought to be probable, then in that time the fortune would amount to £27,182,000. Hargrave said if there were one descendant only to take, his income would be £1,900,000 a year.

Thellusson's last grandson died in 1856. A dispute was then revived, and a chancery suit raised to ascertain whether the eldest great grandson, or the grandson of the eldest son should inherit. The House of Lords decided, on appeal, in 1859, that the grandson by the eldest son was the heir. By that time the fund had been so sweated down by litigation, that little more than £600,000 fell to the lot of the heir.

LORD MANSFIELD'S SHORT WILL.

It was thought by the wiseacres at the time strange, that Lord Mansfield's will should be written only in his own handwriting, on half a sheet of paper, and that the contents there enumerated, in neglect of all the current forms of legal practice, should have proved valid for the disposal of half a million of property.

After a few legacies to friends, Lord Mansfield's will gave the residue of the property to his nephew, Lord Stormont, in these words: "Those who are dearest and nearest to me, best know how to manage and improve, and ultimately, in their turn, to divide and subdivide, the good things of this world, which I commit to their care, according to events and contingencies which it is impossible for me to foresee, or trace through all the mazy labyrinths of time and chance."—2 Camp. Ch. J.J.'s, 562.

A WILL IN RHYME.

In 1737, the following will was proved in Doctors' Commons, and passed a considerable personal estate. Administration with the will annexed was granted to Paul Whichcote and others:—

The fifth day of May
 Being airy and gay
 And to hyp not inclined
 But of vigorous mind
 And my body in health
 I'll dispose of my wealth.
 And I'm to leave
 On this side the grave
 To some one or other
 And I think to my brother
 Because I foresaw
 That my brethren-in-law
 If I did not take care
 Would come in for their share
 Which I nowise intended
 Till their manners are mended
 And of that God knows, there's no sign.
 I do therefore enjoin
 And do strictly command
 Of which witness my hand
 That naught I have got
 Be brought into hotch pot
 But I give and devise
 As much as in me lies
 To the son of my mother
 My own dear brother
 To have and to hold
 All my silver and gold
 As the affectionate pledges
 Of his brother John Hodges.

STEALING DEAD BODIES FOR DISSECTION.

The cupidity of man seems in all ages to have prompted him to rob not only the living, but the dead, by rifling the graves and despoiling them of the ornaments, which the piety and charity of friends have placed in honour of the dead. By the old Roman law it was a capital crime to injure or dig up a dead body laid in its grave, which punishment was sometimes commuted into banishment. And the Christian emperors continued the law.

To desecrate sepulchres and appropriate the materials was also a ground of confiscation of the house or farm on which the materials were used; and afterwards a fine was added, and other punishments. A robber of graves was the most infamous of all robbers, and the Church treated him as liable to public penance. Coke observed, that the stealing of a shroud was larceny, because it was the property of the executors; but as to the dead body itself, larceny could not be committed. In England, the stealing of dead bodies during the present century to supply subjects for medical discovery had become frequent; and a Bill was brought into Parliament to allow the dead bodies of those convicted of burglary or highway robbery to be dissected; but the Bill was rejected. During the Anatomy Bill discussions, about 1830, it was said, that men got four pounds for an adult body, and sold children's bodies at so much per inch. And sometimes ten pounds were paid. At length a statute was passed to enable the dead bodies of convicts, paupers, and others to be obtained without any violation of decorum.—2 Paterson's Lib. Subject, 425.

LAWYER'S BEQUEST TO A LUNATIC HOSPITAL.

A French advocate of Colmar by his will bequeathed 100,000 francs to the hospital for lunatics of that town. "I have acquired this money," said he in his will, "among those who spend their lives in litigation. It is then only a *restitution*."

A MISER GIVING AND BEQUEATHING.

A solicitor was sent for by a miser who was dying, for the purpose of drawing his will. The man of law began, "I give and bequeath," when he was interrupted by the testator, "No, no, I can do nothing of that kind; I will never give or bequeath anything; I cannot do it." "Well then," said the solicitor, after a little reflection, "suppose you say this way—I hereby lend so-and-so to be repaid with interest at the last day." "Yes, yes, that's better, that will do," and the miser felt more comfortable in stating the details.

A LEGACY WITH AN IMPOSSIBLE CONDITION.

Swinburne mentions a bequest of a legacy to a person on condition of his drinking up all the water in the sea; and it was held that, as this condition could not be performed, it was void, and the legacy was good without it.

LAWYERS OUTWITTING THEMSELVES ABOUT LEGACY DUTY.

Moore says it was mentioned by Joy, that Sir William Scott, to save the legacy duty, made over the £20,000 he intended for his son William during his lifetime. But William, who died before his father, made a will, leaving this sum back again, so that Sir William did not escape the duty after all. And now a question has arisen whether Lady Sidmouth, to whom the sum was bequeathed by Sir William, can establish her claim to it—adding one more instance to the many already extant of great lawyers committing blunders in the management of their own legal affairs.—Moore's Mem.

LEGACY TO ONE OF MY FARMING MEN.

A legacy was bequeathed to William Reynolds, "one of my farming men." It turned out that there were two of that name. William Reynolds (No. 1) was the only male who lived in the house with the testator, and was a jack-of-all-trades. He cleaned the boots and knives, waited at table, milked the cows, fed the pigs, and occasionally took a hand in the rick-yard and on the farm. He was called "Old Will," and was paid weekly wages. No. 2 was a mere labourer employed on the farm. The executors having given the legacy to "Old Will," it fell to Vice-Chancellor Knight Bruce to decide which was entitled. The judge said: "If No. 1 was a coachman, groom, and gardener; if he was a valet, footman, and butler, why may he not also have been a farming man?" So Old Will was held entitled to the legacy.

A LEGACY OF BLACK AND WHITE HORSES.

In Martinus Scriblerus's Reports, the following interesting case was written by Fortescue Aland, the

friend of Pope, and afterwards a judge and Master of the Rolls. Stradling sued Stiles for certain coloured horses called pied horses, bequeathed by Sir John Swale, who, in his will, said, "I do bequeath unto the said Matthew Stradling all my black and white horses." The testator had six black horses, six white horses, and six pied horses. The question was, whether the pied horses were bequeathed to Stradling. It was argued for the plaintiff that black and white were the two extremes, and so comprehended all other colours whatsoever. The word black gave all the black horses, the word white all the white, and the words "black and white" gave all the pied horses. The defendant however argued, that surely all colours would not pass by the bequest, such as red or bay. A pied horse was neither black nor white; how then could it come under the words, black and white horses?

The court was long in doubt, and after great deliberation, gave judgment for the plaintiff. But after their judgment a new difficulty arose, for it was alleged that the horses were mares, and so the court took time again to consider, and to this day the point has never been settled.

LEGACY TO THE SERVANT WHO CLOSED THE MASTER'S EYES.

An avaricious bachelor, in the north of France, who starved his servants, at last hit upon a way of keeping one, by letting it be known that in his will he had made this legacy: "I give and bequeath to the servant who shall close my eyes, 1,500 livres, and my domain in Varac." A famished valet, who had clung to the service, made a claim under this legacy. The relatives disputed it, and said it was null and void, because the testator was blind of one eye, and therefore no servant could "close his eyes." The valet took legal advice, and carried the matter into court, when the judges unanimously held that it was absurd to suppose a testator could intend a legacy to depend on so paltry a quibble; that a reasonable construction must be put on the will, and that it would be disrespectful to the deceased to attribute to him the perpetration of so heartless a joke as the relatives contended for. Accordingly, judgment was given

for the servant who was legatee. An appeal was carried to the Parliament of Paris, but the judgment was affirmed, and thus the old miser was made to do something which probably would have made him turn in his grave if he had suspected any good would be done to a human being through him or his estate.

A LEGACY ON CONDITION OF GIVING THE HEIR WHAT THE
LEGATEE CHOOSES.

In France, before the abolition of the Jesuits, a gentleman left all his estates, not to his only son, but to the convent of Jesuits, on condition that on the return of testator's son from abroad, they should give him whatever they should choose. The son did return, and demanded a share, and they gave him a very small portion. He consulted the lawyers, and an advocate advised him to sue the convent, and thus pleaded his client's cause. "The testator," said the advocate, "has left the son that share which the fathers shall choose; *la partie qui leur plairoit*, are the words of the will. Now it is plain what part they have chosen, by what they keep to themselves. My client then stands upon the words of the will. Let me have, says he, the part they have chosen, and I am satisfied." The court could not resist this ingenious reasoning, and ordered the bulk of the estate to be given to the heir accordingly.

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